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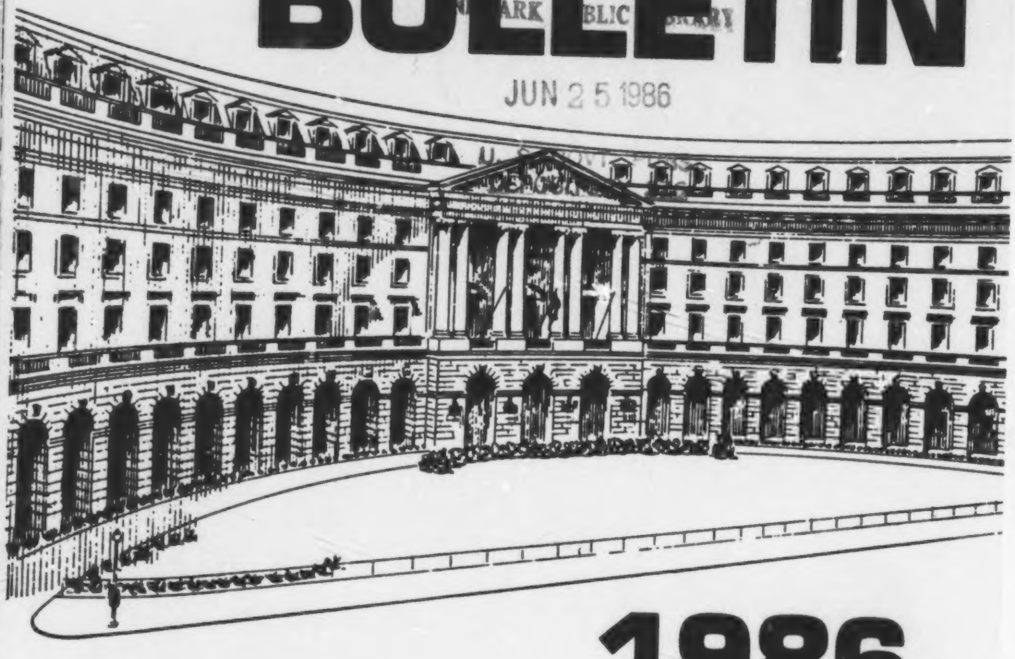
BUREAU OF ALCOHOL,
TOBACCO AND FIREARMS

QUARTERLY BULLETIN



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VOLUME 1

DEPARTMENT OF TREASURY

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QUARTERLY BULLETIN

Bureau of Alcohol, Tobacco and Firearms

Department of the Treasury

CONTAINS:

Treasury Decisions, Rulings, and Procedural and Administrative Matters Concerning Alcohol, Tobacco, Firearms, and Explosives

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NOTE

Comments concerning the contents of this issue may be directed to Bureau of Alcohol, Tobacco and Firearms, Office of Compliance Operations, Washington, DC 20226.

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For sale by the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402. Single copy price: $4.25 (domestic) and $5.35 (foreign). Subscription price: $15.00 (domestic) and $18.75 (foreign).

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Preface

The Alcohol, Tobacco and Firearms Quarterly Bulletin is the authoritative instrument of the Bureau for announcing official rulings and procedures, and for publishing Treasury decisions, legislation, administrative matters, and other items of general interest. It incorporates, into one publication, matters of the Bureau which are of public record.

The Bureau publishes rulings and procedures to promote uniform application of the laws and regulations it administers. Rulings interpret the requirements of laws and regulations and apply retroactively unless otherwise indicated; whereas, procedures establish methods for performing operations to comply with such law and regulations.

Rulings and procedures reported in the Bulletin do not have the force and effect of Treasury Department regulations but they may be used as precedents. In applying published rulings and procedures, the effect of subsequent legislation, regulations, court decisions, rulings, and procedures must be considered. Concerned parties are cautioned against reaching the same conclusions in other cases unless the facts and circumstances are substantially the same.

Definitions

Rulings and Procedures that have an effect on previous rulings or procedures use the following defined terms to describe the effect:

AMPLIFIED is used in a situation where no change is being made in a prior published position, but the prior position is being extended to apply to a variation of the fact situation as set forth in the new ruling. Thus, if an earlier ruling held that a principal applied to A, and the new ruling holds that the same principal also applies to B, the earlier ruling is amplified.

CLARIFIED is used in a situation where the language in a prior ruling is being made clear because the language has caused, or may cause, some confusion. It is not used where a position in a prior ruling is being changed.

DECLARED OBSOLETE is used in a situation where a previously published ruling is not considered determinative with respect to future transactions. This term is most commonly used in a ruling that lists previously published rulings that are declared obsolete because of changes in law or regulations. A ruling may also be declared obsolete because its substance has been included in regulations subsequently adopted.

MODIFIED is used in a situation where the substance of a previously published position is being changed. Thus, if a prior ruling held that a principle applied to A but not to B, but the new ruling holds that it applies to both A and B, the prior ruling is modified.

REVOKED is used in a situation where the position in the previously published ruling is not correct and the correct position is being stated in the new ruling. Rulings which have been revoked have no further effect.

SUPERSEDED is used in a variety of situations. The term may be used where the new ruling amplifies a prior ruling *if* both the position taken in the prior ruling and the position as amplified are contained in the text of the new ruling. The term may be similarly used where the new ruling clarifies or modifies a prior ruling. The term may also be used where, for the purpose of updating references, the new ruling does nothing more than restate the substance and situation of a prior ruling. For example, a ruling issued under former statutes and regulations (e.g. the 1939 Code – 26 CFR Part 225) may be reissued under the current statutes and regulations (e.g. the 1954 Code – 27 CFR Part 201). Lastly, the term may be used when it is desired to republish in a single ruling a series of situations, names, etc., that were previously published over a period of time in separate rulings.

SUPPLEMENTED is used in situations in which a list, such as a list of curios and relics, is published in a ruling and that list is expanded by adding further items in subsequent rulings. After the original ruling has been supplemented several times, a new ruling may be published that includes the list in the original ruling and the additions, and supersedes all prior rulings in the series.

ABBREVIATIONS:

The following abbreviations appear in material published in the Bulletin:

A,B,C, etc. – The name of individuals
ATF – Bureau of Alcohol, Tobacco and Firearms
ATFQB – Alcohol, Tobacco and Firearms Quarterly Bulletin
ATF Proc. – ATF Procedure
ATF Rul. – ATF Ruling
C.B. – Cumulative Bulletin
Ct.D. – Court Decision
CFR – Code of Federal Regulations
D.O. – Delegation Order
E.O. – Executive Order
FAA Act – Federal Alcohol Administration Act
F.R. – Federal Register
M,N,X,Y,Z, etc. – The names of corporations, places and businesses, according to context
Pub. L. – Public Law
Rev. Proc. – Revenue Procedure
Rev. Rul. – Revenue Ruling
Stat. – Statutes at Large
T.D. – Treasury Decision
T.D.O. – Treasury Department Order
U.S.C. – United States Code
x and y – used to represent certain number and when used with the world "dollars" represent sums of money.

Treasury Decisions

Subpart A—ALCOHOL

Subpart A—ALCOHOL

TITLE 27—ALCOHOL, TOBACCO PRODUCTS AND FIREARMS—CHAPTER I—BUREAU OF ALCOHOL, TOBACCO AND FIREARMS, DEPARTMENT OF THE TREASURY.

Implementation of Form 5000.24, Excise Tax Return

T.D. ATF-219

27 CFR Parts 19, 240, 245, 270, 285, and 295

AGENCY: Bureau of Alcohol, Tobacco and Firearms (ATF), Treasury.

ACTION: Final rule (Treasury decision).

SUMMARY: This final rule, which is being issued without notice, amends ATF regulations to implement a new form, Form 5000.24, Excise Tax Return. Form 5000.24, Excise Tax Return, is prescribed for use in conjunction with both the prepayment and deferred payment of excise taxes on distilled spirits, wines, beer, cigars, cigarettes, and cigarette papers and tubes. With the exception of taxpayers in Puerto Rico filing returns under the provisions of 27 CFR Part 250 or 27 CFR Part 275, Form 5000.24 shall be used by all persons required to file ATF tax returns covering the payment of excise taxes on alcoholic beverages, tobacco products, and cigarette papers and tubes. This document also deletes from 27 CFR Parts 270 and 285 outdated transitional rules which are applicable only to taxable removals made prior to January 1, 1983.

EFFECTIVE DATE: January 1, 1986.

FOR FURTHER INFORMATION CONTACT: Harriett S. Bobo, Procedures Branch, Bureau of Alcohol, Tobacco and Firearms, 1200 Pennsylvania Avenue, NW., Washington, DC. 20226 (202-566-7602).

SUPPLEMENTARY INFORMATION:

Background

26 U.S.C. 5061(a) and 5703(b) require that the excise taxes on distilled spirits, wines, beer, cigars, cigarettes, and cigarette papers and tubes be collected on the basis of a return. Currently, ATF regulations in 27 CFR Parts 19, 240, 245, 270, and 285 prescribe the use of 8 different return forms for the collection of these taxes. In order to simplify returns processing. ATF consolidated these 8 returns into one new form, Form 5000.24, Excise Tax Return.

Obsolete Forms

Implementation of Form 5000.24, Excise Tax Return, makes the following forms obsolete.

ATF 5110.32—Prepayment Return—Distilled Spirits Tax.

ATF F 5110.35—Distilled Spirits Tax Returns—Deferred Payment.

ATF F 2050 (5120.27)—Wine Tax Return.

ATF F 2052 (5120.37)—Prepayment Return—Wine Tax.

ATF F 2034 (5130.7)—Beer Tax Return.

ATF F 3071 (5210.7)—Tax Return—Manufacturer of Tobacco Products.

ATF F 2617 (5210.11)—Prepayment Tax Return—Manufacturer of Tobacco Products.

ATF F 2137 (5230.1)—Monthly Tax Return—Manufacturer of Cigarette Papers and Tubes.

These 8 forms may not be used for the payment of tax liabilities incurred after December 31, 1985.

Regulatory Changes

Implementation of Form 5000.24, Excise Tax Return, requires many regulatory changes. Every regulation in Title 27 of the Code of Federal Regulations containing an obsolete form number has to be amended. In addition, some sections of regulations are being revised to clarify the fact that Form 5000.24 is to be used as both a prepayment and a deferred payment or semimonthly return. Instructions for preparing tax return forms are being deleted from regulations in those cases where the same or similar instructions appear on Form 5000.24.

Unlike many of the forms that it replaces, Form 5000.24 will not require the taxpayer to show quantities of taxable commodities removed subject to tax during the period covered by the tax return. Therefore, all regulations requiring the taxpayer to include such information on his tax returns are being revised to delete this reporting requirement.

Regulations in 27 CFR Part 270 and 27 CFR Part 285 are also being revised to delete transitional rules applicable only to taxable removals made before January 1, 1983.

Administrative Procedures Act

As authorized by section 553 of Title 5 of the United States Code, the regulatory changes in this final rule are being made without prior notice. Public participation in these changes is deemed unnecessary because the changes are minor, liberalizing, and non-controversial in nature. This decision merely consolidates 8 different tax return forms into one and deletes requirements that were applicable only before January 1, 1983. For these reasons, ATF has determined that it is impractical and unnecessary to issue this rule with notice and public procedure under 5 U.S.C. 553(b) or subject to the effective date limitation of 5 U.S.C. 553(d).

* * * * *

Drafting Information

The principal author of this document is David Purcell, Procedures Branch, Bureau of Alcohol, Tobacco and Firearms.

List of Subjects

27 CFR Part 19

Administrative practice and procedure, Alcohol and alcoholic beverages, Authority delegations, Claims, Chemicals, Customs duties and inspection, Electronic fund transfers, Excise taxes, Exports, Gasohol, Imports, Labeling, Liquors, Packaging and containers, Puerto Rico, Reporting and recordkeeping requirements, Research, Security measures, Spices and flavorings, Surety bonds, Transportation, Virgin Islands, Warehouses, Wine.

27 CFR Part 240

Administrative practice and procedure, Authority delegations, Claims, Electronic fund transfers, Excise taxes, Exports, Food additives, Fruit juices, Labeling, Liquors, Packaging and containers, Reporting and recordkeeping requirements, Research, Scientific equipment, Spices and flavorings, Surety bonds, Transportation, Vinegar, Warehouses, Wine.

27 CFR Part 245

Administrative practice and procedure, Authority delegations, Beer, Claims, Electronic fund transfers, Excise taxes, Labeling, Packaging and containers, Reporting and recordkeeping requirements, Research, Surety bonds, Transportation.

27 CFR Part 270

Administrative practice and procedure, Authority delegations, Cigars and cigarettes, Claims, Electronic fund transfers, Excise taxes, Labeling, Packaging and containers, Penalties, Reporting and recordkeeping requirements, Seizures and forfeitures, Surety bonds.

27 CFR Part 285

Administrative practice and procedure, Authority delegations, Cigarette papers and tubes, Cigars and cigarettes, Claims, Customs duties and inspection, Electronic fund transfers, Excise taxes, Packaging and containers, Penalties, Reporting and recordkeeping requirements, Seizures and forfeitures, Surety bonds.

27 CFR Part 295

Administrative practice and procedure, Authority delegations, Cigarette papers and tubes, Cigars and cigarettes, Excise taxes, Labeling, Packaging and containers, Reporting and recordkeeping requirements.

Authority and Issuance

PART 19—[AMENDED]

27 CFR Part 19—Distilled Spirits Plants is amended as follows:

Paragraph 1. The authority citation for Part 19 is revised to read as follows:

Authority: 19 U.S.C. 81c, 1311; 26 U.S.C. 5001, 5002, 5004-5006, 5008, 5041, 5061, 5062, 5066, 5101, 5111-5113, 5171-5173, 5175, 5176, 5178-5181, 5201-5207, 5211-5215, 5221-5223, 5231, 5232, 5235, 5236, 5241-5243, 5271, 5273, 5301, 5311-5313, 5362, 5370, 5373, 5501-5505, 5551-5555, 5559, 5561, 5562, 5601, 5612, 5682, 6001, 6065, 6109, 6302, 6311, 6676, 7510; 31 U.S.C. 9301, 9303, 9304, 9306.

Paragraph 2. The authority citations in Part 19 are amended by removing the citation "26 U.S.C. 5103", wherever it appears; by replacing the citation "6 U.S.C. 6", wherever it appears, with the citation "31 U.S.C. 9304"; by replacing the citation "6 U.S.C. 7", wherever it appears, with the citation "31 U.S.C. 9306"; and by replacing the citation "6 U.S.C. 15", wherever it appears, with the citation "31 U.S.C. 9301, 9303".

§ 19.46 [Amended]

Paragraph 3. Section 19.46 is amended by removing the words "distilled spirits tax return" inserting in their place the words "excise tax return".

§ 19.515 [Amended]

Paragraph 4. Section 19.515 is amended by removing the words "paid on Form 5110.32" and inserting in their place the words "prepaid on Form 5000.24".

§ 19.519 [Amended]

Paragraph 5. Section 19.519 is amended by removing the words "on Form 5110.32 or on Form 5110.35" and inserting in their place the words "on Form 5000.24".

§§ 19.520 and 19.521 [Amended]

Paragraph 6. Sections 19.520 and 19.521 are amended by removing the words "Form 5110.32 or Form 5110.35", wherever they appear, and inserting in their place the words "Form 5000.24".

Paragraph 7. Section 19.522 is amended by revising paragraphs (a) and (c) to read follows:

§ 19.522 Taxes to be collected by returns.

(a) *Deferred taxes.* The tax on spirits to be withdrawn from bond for deferred payment of tax shall be paid pursuant to a semimonthly return on Form 5000.24. The periods to be covered by semimonthly returns on Form 5000.24 shall run from the 1st day through the 15th day of each month, and from the 16th day through the last day of each month. A return, Form 5000.24, shall be executed and filed for each semimonthly return period notwithstanding that no tax is due for payment for such period. The proprietor of each bonded premises shall include, for payment, on his semimonthly return on Form 5000.24, the full amount of distilled spirits tax determined in respect of all spirits released for withdrawal from the bonded premises on determination of tax during the period covered by the return (except spirits on which tax has been prepaid).

* * * * *

(c) *Prepaid taxes.* The tax on distilled spirits shall be paid pursuant to a prepayment return on Form 5000.24 in all cases where the tax is required to be paid before the spirits are withdrawn from bond. A single prepayment return on Form 5000.24 may cover one or more transactions. The proprietor shall note the serial number of the Form 5000.24 and the date and time such prepayment return was filed on the individual record of tax determination.

Paragraph 8. Section 19.523 is revised to read as follows:

§ 19.523 Time for filing returns.

(a) *Payment pursuant to semimonthly return.* Where the proprietor of bonded premises has withdrawn spirits from such premises on determination and before payment of tax, he shall file a semimonthly tax return covering such spirits on Form 5000.24, and remittance as required by § 19.524 or § 19.525, not later than the last day of the second succeeding return period. Where the due date for filing a return falls on a Saturday, Sunday, or legal holiday, the time for filing is extended to the first succeeding day which is not a Saturday, Sunday, or legal holiday.

(b) *Payment pursuant to prepayment return.* If the proprietor of a distilled spirits plant desires to withdraw spirits from bonded premises on determination of tax and does not have on file an approved withdrawal or unit bond of sufficient penal sum to cover the withdrawal, if there is default by him in any payment of tax under this part, or the proprietor is notified by the regional director (compliance) as provided in § 19.522(b)(2), the proprietor shall not remove the spirits from the bonded premises until the tax thereon has been paid. To pay the tax, the proprietor of the bonded premises shall file a prepayment return on Form 5000.24, and remittance as required by § 19.524 or § 19.525, before removal of the spirits.

§ 19.524 [Amended]

Paragraph 9. Section 19.524 is amended by removing the words "ATF F 5110.32 or ATF F 5110.35", wherever they appear, and inserting in their place the words "ATF F 5000.24".

§ 19.525 [Amended]

Paragraph 10. Section 19.525 is amended by removing the words "ATF F 5110.32 or 5110.35" and the words "Form 5110.32 or Form 5110.35" and inserting in their place the words "Form 5000.24".

§ 19.561 [Amended]

Paragraph 11. Section 19.561 is amended by replacing the number "508", which appears in the authority citation, with the number "5008".

§ 19.565 [Amended]

Paragraph 12. Section 19.565 is amended by deleting the first sentence of the section and by inserting in its place the following: "An unexplained shortage of bottled distilled spirits shall be taxpaid: (a) Immediately on a prepayment return on Form 5000.24 or (b) on the semimonthly return on Form 5000.24 for the return period during which the shortage was ascertained."

Paragraph 13. Section 19.703 is revised to read as follows:

§ 19.703 Taxpayment of samples.

When tax is required to be paid on samples:

(a) If the proprietor is qualified to defer payment of tax, the tax shall be included in the proprietor's semimonthly tax return on Form 5000.24.

(b) If the proprietor is not qualified to defer the payment of tax, the tax shall be paid on a prepayment tax return on Form 5000.24.

PART 240—[AMENDED]

27 CFR Part 240—Wine is amended as follows:

Paragraph 1. The authority citation for Part 240 is revised to read as follows:

Authority: 5 U.S.C. 552(a); 26 U.S.C. 5001, 5008, 5041, 5042, 5044, 5061, 5062, 5111-5113, 5121, 5122, 5142, 5143, 5173, 5206, 5214, 5215, 5332, 5351, 5353, 5354, 5356-5358, 5361, 5362, 5364-5373, 5381-5388, 5391, 5392, 5551, 5552, 5661, 5662, 5684, 6065, 6091, 6109, 6301, 6302, 6311, 6651, 6676, 7011, 7302, 7342, 7502, 7503, 7606, 7805, 7851; 27 U.S.C. 205; 31 U.S.C. 9301, 9303, 9304, 9306.

Paragraph 2. The authority citations in Part 240 are amended by removing the citations "18 U.S.C. 926", "22 U.S.C. 2778", "26 U.S.C. 5011", and "26 U.S.C. 5082", wherever they appear; by replacing the citation "6 U.S.C. 6", wherever it appears, with the citation "31 U.S.C. 9304"; by replacing the citation "6 U.S.C. 7", wherever it appears, with the citation "31 U.S.C. 9306"; and by replacing the citation "6 U.S.C. 15", wherever it appears, with the citation "31 U.S.C. 9301, 9303".

Paragraph 3. The table of contents is amended by revising the title of § 240.901 to read as follows and by removing § 240.902:

* * * * *

Subpart UU—Records and Reports

* * * * *

240.901 Form 5000.24.

* * * * *

§ 240.590a [Amended]

Paragraph 4. Section 240.590a is amended by removing the number "2050", whenever it appears, and inserting in its place the number "5000.24".

Paragraph 5. Section 240.591 is amended by revising paragraphs (a) and (c) to read as follows:

§ 240.591 Payment of tax by check, cash, or money order.

(a) *General.* The tax on wine shall (unless prepaid) be paid by semimonthly return on Form 5000.24, which shall be filed with remittance, for the full amount of tax due as shown on the return in a manner authorized under 26 CFR 301.6311-1 (Payment by check or money order). All entries in the return shall be fully supported by accurate and complete records satisfactory to the regional director (compliance). The proprietor shall include for payment on his return, Form 5000.24, the full amount of tax required to be determined (and not prepaid) on all wine removed daily from the bonded wine cellar premises (or transferred to a taxpaid room on the premises) for consumption or sale during the period covered by the return. Prepayments of tax on wine during the period covered by the return shall be separately shown thereon. Except as provided in § 240.592, a return on Form 5000.24 shall be executed and filed to cover each return period, notwithstanding that no tax is due for such period.

* * * * *

(c) *Time for filing returns and paying tax.* Semimonthly returns on Form 5000.24, with remittances, shall, unless the proprietor is qualified for extended deferral, be filed not later than the third calendar day next succeeding the last day of each return period, excluding any Saturday, Sunday, or legal holiday in the District of Columbia, or any statewide holiday of the State in which the return is required to be filed.

* * * * *

§ 240.591a [Amended]

Paragraph 6. Section 240.591a is amended by removing the words "Form 2050 or Form 2052", wherever they appear, and inserting in their place the words "Form 5000.24".

§ 240.592 [Amended]

Paragraph 7. Section 240.592 is amended by removing the number "2050" and inserting in its place the number "5000.24".

Paragraph 8. Section 240.594 is revised to read as follows:

§ 240.594 Prepayment of tax; general.

(a) A proprietor shall, before removal of the wine for consumption or sale, file a prepayment tax return on Form 5000.24, with remittance, where (1) he is required to prepay tax under § 240.595, (2) his tax deferral bond (or bonds), Form 2053, is not in the maximum penal sum and the tax determined and unpaid at any one time exceeds the penal sum of such bond by more than $100, or (3) he does not have an approved tax deferral bond, Form 2053, and the total amount of tax unpaid at any one time exceeds $100. The return, with remittance, shall be filed by forwarding or delivering it to the district director or the director of the service center in accordance with the instructions on the form. For the purposes of complying with this section, the term "forwarding" shall mean deposit in the U.S. mail, properly addressed to the Internal Revenue Service.

(b) However, when a proprietor is required by § 240.591a to deliver payment of tax by electronic fund transfer, the proprietor shall prepay the tax before any wine can be removed for consumption or sale by (1) completing a prepayment return on Form 5000.24, and by mailing it, as instructed on the return, to the district director, the director of the service center, or the regional director (compliance) and (2) by directing the proprietor's bank to effect an EFT.

§§ 240.594a, 240.594b, and 240.594c [Amended]

Paragraph 9. Section 240.594a, 240.594b, and 240.594c are amended by removing the words "Form 2050 or Form 2052" and the words "Forms

2050 or 2052", wherever they appear, and inserting in their place the words "Form 5000.24".

§ 240.596 [Amended]

Paragraph 10. Section 240.596 is amended by removing the words "Form 2052 or Form 2050, as the case may be" and inserting in their place the words "Form 5000.24".

§ 240.806 [Amended]

Paragraph 11. Section 240.806 is amended by removing the words "wine tax return" and inserting in their place the words "excise tax return".

Paragraph 12. Section 240.901 is revised to read as follows:

§ 240.901 Form 5000.24.

(a) *General.* Form 5000.24 shall be prepared and filed in accordance with the instructions on the form.

(b) *Semimonthly return.* The proprietor of every bonded wine cellar removing wine subject to tax shall, except as provided in § 240.592, prepare semimonthly returns on Form 5000.24, showing thereon the total tax due. There shall also be shown any increases or decreases in tax due to errors in previous returns, or credit under the provisions of Subpart OO for unmerchantable wines returned to bond, or credit under the provisions of Part 252 of this chapter where such credit is authorized by the regional director (compliance) on Form 2639, and credit for the prepayment of tax.

(c) *Prepayment return.* When a proprietor is required to prepay tax, as provided in §§ 240.594(a) and 240.595, the proprietor shall first prepare Form 5000.24 in an amount sufficient to cover the tax on the quantity of wine proposed to be removed that day. Prior to removal of the wine, the proprietor shall forward or deliver Form 5000.24 with remittance as provided in § 240.594(a) or, the case of prepayment by electronic fund transfer, shall file the return and pay the tax as provided in § 240.594(b).

Paragraph 13. Section 240.902 is removed.

PART 245—[AMENDED]

27 CFR Part 245—Beer is amended as follows:

Paragraph 1. The authority citation for Part 245 is revised to read as follows:

Authority: 5 U.S.C. 552(a); 26 U.S.C. 5002, 5051-5054, 5056, 5061, 5113, 5142-5144, 5146, 5222, 5401, 5402, 5411-5417, 5551, 5552, 5555, 5556, 5671, 5673, 5684, 6011, 6061, 6065, 6091, 6109, 6151, 6301, 6302, 6302(c), 6311, 6313, 6402, 6676, 7011, 7342, 7606, 7805, 31 U.S.C. 9301, 9303-9306.

Paragraph 2. The authority citations in Part 245 are amended by replacing the citation "6 U.S.C. 6", wherever it appears, with the citation, "31 U.S.C. 9304"; by replacing the citation "6 U.S.C. 7", wherever it appears, with the citation "31 U.S.C. 9306"; by replacing the citation "6 U.S.C. 8", wherever it appears, with the citation "31 U.S.C. 9305"; and by replacing the citation "6 U.S.C. 15", wherever it appears, with the citation "31 U.S.C. 9301, 9303".

Paragraph 3. The table of contents is amended by revising the title of § 245.227 to read as follows:

* * * * *

Subpart AA—Records, Reports, and Returns

* * * * *

§ 245.227 Excise tax return, Form 5000.24.

* * * * *

Paragraph 4. Sections 245.110b, 245.110c, 245.110d, 245.112, 245.117a, 245.117e, 245.117f, 245.117g, and

245.166 are amended by removing the numbers "2034" and "2034" (5130.7)", wherever they appear, and inserting in their place the number "5000.24".

§ 245.117 [Amended]

Paragraph 5. Section 245.117 is amended by removing the number "2034 (5130.7)", wherever it appears, and inserting in its place the number "5000.24"; by removing paragraph (c); and by redesignating paragraphs (d), (e), and (f) as paragraphs (c), (d), and (e), respectively.

§ 245.117d [Amended]

Paragraph 6. Section 245.117d is amended by removing the number "2034 (5130.7)" and inserting in its place the number "5000.24" and by removing the last sentence of paragraph (b)(1).

Paragraph 7. Section 245.227 is revised to read as follows:

§ 245.227 Excise tax return, Form 5000.24.

All entries in the return, Form 5000.24, shall be fully supported by accurate and complete records.

PART 270—[AMENDED]

27 CFR Part 270—Manufacture of Cigars and Cigarettes is amended as follows:

Paragraph 1. The authority citation for Part 270 is revised to read as follows:

Authority: 5 U.S.C. 552(a); 26 U.S.C. 5701, 5703-5705, 5711-5713, 5721-5723, 5741, 5751, 5753, 5761-5763, 6109, 6301, 6302, 6311, 6313, 6402, 6404, 6423, 6676, 7212, 7325, 7342, 7502, 7503, 7606, 7605; 27 U.S.C. 205; 31 U.S.C. 9301, 9303, 9304, 9306.

Par. 2. The authority citations in Part 270 are amended by removing the citations "18 U.S.C. 926", "22 U.S.C. 2778" and "26 U.S.C. 5707", wherever they appear; by replacing the citation "6 U.S.C. 6", wherever it appears, with the citation "31 U.S.C. 9304"; by replacing the citation "6 U.S.C. 7", wherever it appears, with the citation "31 U.S.C. 9306"; and by replacing the citation "6 U.S.C. 15", wherever it appears, with the citation "31 U.S.C. 9301, 9303".

Par. 3. The table of contents is amended by removing section titles for §§ 270.141, 270.142, and 270.164.

§ 270.141, 270.142 and 270.164 [Removed]

Par 4. Sections 270.141, 270.142, and 270.164 are removed.

Par. 5. Section 270.162 is revised to read as follows:

§ 270.162 Semimonthly tax return.

Every manufacturer of tobacco products shall file, for each of his factories, a semimonthly tax return on Form 5000.24 for each return period, including any period during which a manufacturer begins or discontinues business. The return shall be filed with the district director or the director of the service center in accordance with the instructions on the form. The manufacturer shall file the return at the time specified in § 270.165 regardless of whether cigars or cigarettes are removed or whether tax is due for that particular return period. However, when the manufacturer requests by letter and the regional director (compliance) grants specific authorization, the manufacturer need not during the term of such authorization file a tax return for which tax is not due or payable.

Par. 6. Section 270.165 is revised to read as follows:

§ 270.165 Times for filing semimonthly return.

(a) *General.* Semimonthly returns on Form 5000.24 shall be filed, for each return period, not later than the 10th day after the end of the first succeeding return period.

(b) *Definitions, etc.* When the manufacturer sends the tax return with or without remittance by U.S. mail to the district director or the director of the service center in accordance with the instructions on the form, the official postmark of the U.S. Postal Service stamped on the cover in which the return was mailed shall be considered the date of delivery of the tax return and, if the return was accompanied by a remittance, the date of delivery of the remittance. When the postmark is illegible, the manufacturer shall prove when the postmark was made. When the proprietor sends the tax return with or without remittance by registered mail or by certified mail, the date of registry or the date of the postmark on the sender's receipt of certified mail, as the case may be, shall be treated as the date of delivery of the tax return and, if accompanied, of the remittance. If the last day for filing a return under this section falls on Saturday, Sunday, or a legal holiday in the District of Columbia, or on a statewide legal holiday in the State wherein the return is required to be filed, the filing of the tax return and remittance required with the return shall be considered timely if accomplished on the next succeeding day which is not a Saturday, Sunday, or legal holiday.

§ 270.165a [Amended]

Paragraph 7. Section 270.165a is amended by removing the words "Form 3071 or Form 2617", wherever they appear, and inserting in their place the words "Form 5000.24".

Paragraph 8. Section 270.167 is amended by revising paragraph (a) to read as follows:

§ 270.167 Prepayment tax return.

(a) To prepay the tax on cigars and cigarettes, a manufacturer shall file a prepayment tax return on Form 5000.24 showing the tax to be paid on the cigars and cigarettes prior to removal. The return shall be executed and filed, prior to the removal of such products, with the district director, director of the service center, or regional director (compliance), in accordance with the instructions on the form. A manufacturer prepaying the taxes on cigars and cigarettes under the provisions of this section shall continue to file semimonthly returns as required by § 270.162.

* * * * *

Paragraph 9. Section 270.169 is revised to read as follows:

§ 270.169 Employer identification number.

The employer identification number (defined at 26 CFR 301.7701-12) of a manufacturer of tobacco products who has been assigned such a number shall be shown on each tax return, Form 5000.24. Failure of the manufacturer to include his employer identification number on Form 5000.24 may result in assertion and collection of the penalty specified in 26 CFR 301.6676-1.

§ 270.217 [Amended]

Paragraph 10. Section 207.717 is amended by replacing the number "23 U.S.C. 5723", which appears in the authority citation, with the number "26 U.S.C. 5723".

PART 285—[AMENDED]

27 CFR Part 285—Manufacture of Cigarette Papers and Tubes is amended as follows:

Paragraph 1. The authority citation for Part 285 is revised to read as follows:

Authority: 5 U.S.C. 552(a); 26 U.S.C. 5701, 5703-5705, 5711, 5721-5723, 5741, 5751, 5753, 5761-5763, 6109, 6302, 6402, 6404, 6676, 7212, 7325, 7342, 7606; 31 U.S.C. 9301, 9303, 9304, 9306.

Paragraph 2. The authority citations in Part 285 are revised by replacing the citation "6 U.S.C. 6", wherever it appears, with the citation "31 U.S.C. 9304" by replacing the citation "6 U.S.C. 7" wherever it appears with the citation "31 U.S.C. 9306"; and by replacing the citation "6 U.S.C. 15", wherever it appears, with the citation "31 U.S.C. 9301, 9303".

Paragraph 3. Section 285.25 is revised to read as follows:

§ 285.25 Return of manufacturer.

(a) *Requirement of filing.* Every manufacturer of cigarette papers and tubes shall file, for each of his factories, a monthly tax return on Form 5000.24. A return shall be filed for each month, regardless of whether cigarette papers and tubes were removed subject to tax or whether tax is due for that particular month. However, when a manufacturer so requests by letter, and the regional director (compliance) grants specific authorization, the manufacturer, need not, during the term of that authorization, file a tax return for any month for which tax is not due or payable.

(b) *Preparation and filing.* The return shall be executed and filed with the district director, director of the service center, or regional director (compliance) in accordance with the instructions on the form.

(c) *Remittance of tax.* Except as provided in § 285.27, remittance of the tax, if any, shall accompany the return.

(d) *Time of filing.* For each month, the return shall be filed not later than the tenth day after the end of the first succeeding month. When the last day for filing a tax return falls on a Saturday, Sunday, or legal holiday in the District of Columbia or in the State where the return is required to be filed, the filing of the return (and remittance of the tax) shall be considered timely if done on the next succeeding day which is not a Saturday, Sunday, or such legal holiday.

§ 285.26 [Amended]

Paragraph 4. Section 285.26 is amended by removing the words "manufacturer's monthly tax return, Form 2137" and inserting in their place the words "tax return, Form 5000.24".

§ 285.27 [Amended]

Paragraph 5. Section 285.27 is amended by removing the number "2137", wherever it appears, and inserting in its place the number "5000.24".

Paragraph 6. Section 285.29 is revised to read as follows:

§ 285.29 Employer identification number.

The employer identification number (defined at 26 CFR 301.7701-12) of a manufacturer of cigarette papers or tubes who has been assigned such a number shall be shown on each monthly tax return, Form 5000.24, filed by a manufacturer of cigarette papers or tubes pursuant to the provisions of this part. Failure of the manufacturer to include his employer identification number on Form 5000.24 may result in assertion and collection of the penalty specified in 26 CFR 301.6676-1.

PART 295—[AMENDED]

27 CFR Part 295—Removal of Cigars, Cigarettes, and Cigarette Papers and Tubes, Without Payment of Tax, For Use of the United States is amended as follows:

Paragraph 1. The authority citation for Part 295 is revised to read as follows:

Authority: 26 U.S.C. 5703-5705, 5711, 5723, 5741, 5751, 5762, 5763, 6313, 7212, 7342, 7606.

§ 295.36 [Amended]

Paragraph 2. Section 295.36 is amended by removing the words "semimonthly tax return, Form 3071, or his monthly tax return, Form 2137, as the case may be" and inserting in their place the words "semimonthly or monthly tax return, Form 5000.24".

Signed: November 21, 1985.

Stephen E. Higgins,
Director.

David D. Queen,
Acting Assistant Secretary
(Enforcement and Operations).

(Filed by the Office of the Federal Register on December 16, 1985 8:45 am and published in the Federal Register for December 17, 1985, 50 F.R. 51386)

TITLE 27—ALCOHOL, TOBACCO PRODUCTS AND FIREARMS —CHAPTER I—BUREAU OF ALCOHOL, TOBACCO AND FIREARMS, DEPARTMENT OF THE TREASURY

Disclosure of Saccharin in the Labeling of Wine, Distilled Spirits, and Malt Beverages

T.D. ATF 220

27 CFR Parts 4, 5 and 7

AGENCY: Bureau of Alcohol, Tobacco and Firearms (ATF), Treasury.

ACTION: Treasury decision, final rule.

SUMMARY: This final rule amends the labeling regulations in 27 CFR Parts 4, 5 and 7, by requiring the following statement on labels of alcohol beverages containing the artificial sweetener saccharin: "Use of this product may be hazardous to your health. This product contains saccharin which has been determined to cause cancer in laboratory animals."

EFFECTIVE DATE: The effective date of this final rule is December 20, 1985.

FOR FURTHER INFORMATION CONTACT: James P. Ficaretta, FAA, Wine and Beer Branch, Bureau of Alcohol, Tobacco and Firearms, 1200 Pennsylvania Avenue, N.W. Washington, DC 20226, 202-566-7626.

SUPPLEMENTARY INFORMATION:

Background

The Federal Alcohol Administration Act (FAA Act), 27 U.S.C. 205(e)(2), vests authority in the Director of the Bureau of Alcohol, Tobacco and Firearms, as a delegate of the Secretary of the Treasury, to prescribe regulations which will provide the consumer with "adequate information" as to the identity and quality of alcohol beverage products. Under this authority, labeling requirements are prescribed in Title 27, Code of Federal Regulations, Parts 4, 5, and 7 for wines, distilled spirits and malt beverages, respectively. The regulations requiring basic mandatory labeling information for alcohol beverage products have been in effect for over 50 years.

In recent years, the Bureau has considered numerous petitions for regulation changes with respect to the ingredient labeling of alcohol beverage products. Such requests have petitioned ATF to require full ingredient labeling, partial ingredient labeling, even health warning statements for specific ingredients found in alcohol beverages which were alleged to be a health hazard. In response to such requests, the Bureau has established a regulatory policy with respect to ingredient labeling and the need to disclose to consumers the presence of specific ingredients, found to be present in alcohol beverage products, which have been determined to pose health risks.

The Bureau, on October 6, 1983, published a final rule (T.D. ATF-150, 48 FR 45549), rescinding the ingredient labeling regulations for alcohol beverage products. However, mandatory label disclosure was required for alcohol beverages containing the color additive FD&C Yellow No. 5. The Bureau found, as a result of its rulemaking effort, that there was evidence establishing that consumers of the few alcohol beverage products containing that color additive may have adverse reactions to the ingredient. The Bureau also determined, at that time, that there was no clear evidence in the record that any other ingredient being used in the production of alcohol beverages posed a recognized health problem.

Pursuant to T.D. ATF-150, the Bureau specifically stated it "will look at the necessity of mandatory labeling of other ingredients on a case-by-case basis through its own rulemaking initiative or on the basis of petitions for rulemaking under 5 U.S.C. 553(e) and 27 CFR 71.41(c)."

Recently, ATF has been petitioned by members of the alcohol beverage industry to use the sugar substitute saccharin in the production of alcohol beverages.

Presently, Food and Drug Administration regulations, 21 CFR 180.37 (21 U.S.C. 348, 371), do not preclude the use of saccharin in the production of alcohol beverages. However, while use is not prohibited, the Saccharin Study and Labeling Act (21 U.S.C. 343) mandates that if saccharin is present in a food, then the following warning must also appear on the label of that product:

> Use of this product may be hazardous to your health. This product contains saccharin which has been determined to cause cancer in laboratory animals.

It is clear that Congress, after an exhaustive consideration of this issue, determined that all products containing saccharin shall display this health warning so that all consumers would be informed about the potential health risks associated with its use.

In recognition of this congressional mandate as expressed in the Saccharin Study and Labeling Act and pursuant to section 5(e)(2) of the Federal Alcohol Administration Act, which relates to providing the consumer with adequate information, the Bureau has determined that any alcohol beverage product which contains saccharin (including sodium saccharin, calcium saccharin and ammonium saccharin) must bear on its label a health warning statement identical to that set forth in the Saccharin Study and Labeling Act. This statement shall appear on a front or back label, separate and apart from other information, in the required size of type, and on a completely contrasting background.

Administrative Procedure Act

Because this Treasury decision implements the national policy expressed in the Saccharin Study and Labeling Act with respect to the labeling of products containing saccharin, it is found that it is impractical and unnecessary to issue this Treasury decision with notice and public procedure under 5 U.S.C. 553(b) or subject to the effective date limitation in section 553(d).

* * * * *

Drafting Information

The author of this document is Coordinator James P. Ficaretta, FAA, Wine and Beer Branch, Bureau of Alcohol, Tobacco and Firearms.

List of Subjects

27 CFR Part 4

Advertising, Consumer protection, Customs duties and inspection, Imports, Labeling, Packaging and containers, and Wine.

27 CFR Part 5

Advertising, Consumer protection, Customs duties and inspection, Imports, Labeling, Liquors, and Packaging and containers.

27 CFR Part 7

Advertising, Beer, Consumer protection, Customs duties and inspection, Imports, and Labeling.

Authority and Issuance

PART 4—[AMENDED]

27 CFR Part 4—Labeling and Advertising of Wine is amended as follows:

Par. 1. The authority citation for 27 CFR Part 4 is revised to read as follows, and the authority citations following §§ 4.23, 4.23a, 4.25, 4.25a, 4.26, 4.39 are removed:

Authority: 27 U.S.C. 205.

Par. 2. Section 4.32 is amended by adding a new paragraph (d) as follows:

§ 4.32 Mandatory label information.

* * * * *

(d) There shall be stated on a front or back label, separate and apart from all other information, the following statement when saccharin is present in the finished product: Use of this product may be hazardous to your health. This product contains saccharin which has been determined to cause cancer in laboratory animals.

PART 5—[AMENDED]

27 CFR Part 5—Labeling and Advertising of Distilled Spirits is amended as follows:

Par. 3. The authority citation for Part 5 is revised to read as follows:

Authority: 26 U.S.C. 5301, 7805; 27 U.S.C. 205.

Par. 4. Section 5.32 is amended to add a new paragraph (b)(6) and to redesignate paragraphs (b)(6), (7), and (8) as paragraphs (b)(7), (8), and (9), respectively, as follows:

§ 5.32 Mandatory label information.

* * * * *

(b) On the brand label or on a back label:

* * * * *

(6) The following statement when saccharin is present in the finished product: Use of this product may be hazardous to your health. This product contains saccharin which has been determined to cause cancer in laboratory animals.

* * * * *

PART 7—[AMENDED]

27 CFR Part 7—Labeling and Advertising of Malt Beverages is amended to read as follows:

Par. 5. The authority citation for 27 CFR Part 7 is revised to read as follows:

Authority: 27 U.S.C. 205.

Par. 6. Section 7.22 is amended by adding a new paragraph (b)(5) as follows:

§ 7.22 Mandatory label information.

* * * * *

(b) * * *

(5) The following statement, separate and apart from all other information, when saccharin is present in the finished product: Use of this product may be hazardous to your health. This product contains saccharin which has been determined to cause cancer in laboratory animals.

Signed: October 25, 1985.

Stephen E. Higgins,
Director.

Approved: December 9, 1985.

David D. Queen
Acting Assistant Secretary
(Enforcement and Operations).

(Filed by the Office of the Federal Register on December 19, 1985 8:45 am and published in the Federal Register for December 20, 1985, 50 F.R. 51851)

TITLE 27—ALCOHOL, TOBACCO PRODUCTS AND FIREARMS —CHAPTER I—BUREAU OF ALCOHOL, TOBACCO AND FIREARMS, DEPARTMENT OF THE TREASURY.

Revision of the Boundary of the Temecula Viticultural Area

T.D. ATF-221

27 CFR Part 9

AGENCY: Bureau of Alcohol, Tobacco and Firearms (ATF), Treasury.

ACTION: Treasury decision, final rule.

SUMMARY: ATF is revising the approved boundary of the Temecula viticultural area to include vineyards which were unintentionally omitted from the area when it was approved in T.D. ATF-188 (49 FR 42563). This revision is based on a notice of proposed rulemaking. Notice No. 571, published in the **Federal Register** of October 10, 1985, at 50 FR 41364, and a petition submitted by Richard C. McMillan, a partner of Bear Valley Vineyards, located near Murrieta, California. The establishment of viticultural areas and the subsequent use of viticultural area names as appellations of origin in wine labeling and advertising will help consumers better identify wines they purchase. The use of viticultural area appellations of origin will also help winemakers distinguish their products from wines made in other areas.

EFFECTIVE DATE: February 7, 1986.

FOR FURTHER INFORMATION CONTACT: John A. Linthicum, Coordinator, FAA, Wine and Beer Branch, (202) 566-7926.

SUPPLEMENTARY INFORMATION: On October 23, 1984, ATF published T.D. ATF-188 (49 FR 42563) establishing the Temecula viticultural area. ATF received two opposing petitions for the establishment of viticultural areas in southwestern Riverside County.

Rulemaking Procedure

Based on Mr. McMillan's petition, ATF published a notice of proposed rulemaking, Notice No. 571, in the **Federal Register** of October 10, 1985, at 50 FR 41364, to request comments concerning this proposed revision of the Temecula viticultural area boundary. In response to Notice No. 571, ATF received one comment, supporting the proposal, from Callaway Vineyard & Winery, Temecula, California. Based on the foregoing, the revision of the boundary of the Temecula Viticultural Area is adopted as proposed.

* * * * *

Drafting Information

The principal author of this document is John A. Linthicum, FAA, Wine, and Beer Branch, Bureau of Alcohol, Tobacco and Firearms.

List of Subjects in 27 CFR Part 9

Administrative practice and procedure, Consumer protection, Viticultural area, Wine.

Authority and Issuance

PART 9—[AMENDED]

27 CFR Part 9, *American Viticultural Areas*, is amended as follows:

¶ 1. The statutory authority for 27 CFR Part 9 continues to read as follows:

Authority: 27 U.S.C. 205.

¶ 2. Section 9.50 is amended by revising paragraphs (c)(23) and (c)(24) and by adding paragraphs (c)(25), (c)(26), and (c)(27), to read as follows:

§ 9.50 Temecula.

* * * * *

(c) * * *

(22) * * *

(23) The boundary proceeds northwesterly along the westernmost branches of Murrieta Creek to its intersection with Hayes Avenue, northwest of Murrieta, California.

(24) The boundary follows Hayes Avenue northwesterly, approximately 4,000 feet, to its terminus at an unnamed, unimproved, fair or dry weather road.

(25) The boundary follows this road southwesterly to Murrieta Creek.

(26) The boundary proceeds northwesterly along the westernmost branches of Murrieta Creek to its intersection with Orange Street in Wildomar, California.

(27) From the intersection of Murrieta Creek and Orange Street in Wildomar, California, the boundary proceeds in a straight line to the beginning point.

Signed: December 5, 1985.

Stephen E. Higgins,
Director.

Approved: December 18, 1985.
Edward T. Stevenson
Deputy Assistant Secretary (Operations).

(Filed by the Office of the Federal Register on January 7, 1986 8:45 am and published in the Federal Register for January 8, 1986 51 F.R. 749)

TITLE 27—ALCOHOL, TOBACCO PRODUCTS AND FIREARMS —CHAPTER I—BUREAU OF ALCOHOL, TOBACCO AND FIREARMS, DEPARTMENT OF THE TREASURY.

Alcoholic Beverages; Application of State Laws and Regulations to Wine Labeled With a Viticultural Area Appellation of Origin

T.D. ATF-222

27 CFR Part 4

AGENCY: Bureau of Alcohol, Tobacco and Firearms (AFT), Treasury.

ACTION: Final rule, Treasury decision.

SUMMARY: This final rule amends regulations on labeling wines with American Viticultural Area appellations of origin. There is no longer a Federal requirement that wines comply with State laws and regulations when labeled with American Viticultural Area appellations of origin. Under the previous requirements, a Federal regulation imposed the laws and regulations of one state upon activities occurring in another state in cases involving multistate viticultural areas. This imposed an unfair compliance burden on wineries located in multistate viticultural areas in comparison to wineries located in other viticultural areas. For example, wines produced in the Washington portion of the multistate Columbia Valley viticultural area were required, by Federal regulation, to comply with the laws and regulations of the State of Oregon. The regulations of Oregon are more restrictive than the regulations of Washington, and the Oregon requirements should not apply to wine made

entirely within the State of Washington. Therefore, the requirement to comply with State laws and regulations is removed as a Federal requirement. The State laws and regulations remain in effect and will continue to be enforced by the agencies of the states involved in winemaking.

EFFECTIVE DATE: March 3, 1986.

FOR FURTHER INFORMATION CONTACT:
John A. Linthicum, FAA, Wine and Beer Branch, (202) 566-7626.

SUPPLEMENTARY INFORMATION:

Background, T.D. ATF-53

Prior to Treasury Decision ATF-53 [August 23, 1978, 43 FR 37675], appellations of origin for domestic wines were generally names of states or in a few cases "regions" or "places." The previous regulation required those wines to be made in conformity with the laws and regulations of such "place" or "region" governing the composition, manufacture and designation of wines. Since many domestic wines claimed State appellations of origin such as "California" or "New York," this regulation generally required compliance with State laws and regulations. This policy recognized the state interest in insuring the quality and integrity of wine bearing that state's name.

With T.D. ATF-53, viticultural areas were established as appellations of origin. American viticultural areas are defined in § 4.25a(e)(1)(i) as delimited grape growing regions distinguishable by geographical features, and recognized in 27 CFR Part 9. Because they are grape growing regions rather than political divisions such as counties or states, their boundaries have no relationship to political boundaries. Ten approved viticultural areas occupy portions of two or more states.

One Federal requirement for use of an American viticultural area was conformity with the laws and regulations of the state in which the viticultural area was located [§ 4.25a(e)(3)(v)]. Thus, wine claiming a "Napa Valley" appellation was required by Federal regulation to conform to California law. Similarly, this Federal requirement existed when a viticultural area encompasses more than one state. For example, wine claiming a "Lake Erie" viticultural area appellation was required to conform to New York, Pennsylvania, and Ohio laws and regulations.

Multistate Viticultural Areas

The Columbia Valley viticultural area, approved in T.D. ATF-190 [November 13, 1984, 48 FR 38497], surfaced a problem with the labeling of wine with multistate viticultural areas. This viticultural area was established in portions of both Oregon and Washington on the basis of geographical features which affect viticultural features. However, laws of both states require an appropriate regulatory agency to issue standards of identity, and regulations of Oregon and Washington differ greatly regarding the production and labeling of wine. Oregon regulations are more stringent than Federal regulations. Since § 4.25a(e)(3)(v) required compliance with laws and regulations of *all* states within a multistate viticultural area, regardless of where the wine is fermented or finished, wine made from grapes originating and fermented in Washington, and finished and bottled within Washington was, nevertheless, subjected to Oregon law and regulations if the wine claimed a multistate viticultural area appellation such as Columbia Valley.

As a result, the Federal regulation appeared to place an unfair burden on some wineries within multistate viticultural areas by subjecting a winery in one state to laws and regulations issued by another state even when the grapes or wine do not enter the other state during the course of wine production. A Federal requirement for compliance with State laws and regulations is both unnecessary and difficult for the Federal Government to enforce due to the multitude of state and local laws and regulations.

Moreover, ATF does not believe that Federal regulation should impose the State laws or regulations of one state upon transactions occurring in other states. State laws and regulations of the state in which the wine was fermented or finished will, of course, continue to apply to the producing winery. These state laws and regulations are enforced by the state involved.

The deletion of this Federal requirement has no bearing on wines labeled with the name of a viticultural area located entirely within a single state. Since § 4.25a(e)(3)(iv) requires a wine claiming a viticultural area appellation to be fully finished within one of the states in which the viticultural area is located, State laws or regulations of that state would apply at the bonded winery where the wine is produced.

Rulemaking Procedure

Based on the foregoing, ATF published a notice of proposed rulemaking [Notice No. 564, May 8, 1985, 50 FR 19384], proposing to amend § 4.25a(e)(3) by deleting paragraph (v) which required compliance with the laws and regulations of all of the States contained in the viticultural area. In response to Notice No. 564, ATF received one comment from Heublein, Inc., supporting the proposed change. Therefore, paragraph (e)(3)(v) is removed from § 4.25a as proposed.

* * * * *

List of Subjects in 27 CFR Part 4

Advertising, consumer protection, Customs duties and inspection, Imports, Labeling, Packaging and containers, Wine.

Drafting Information

The principal authors of this document are Charles N. Bacon and John A. Linthicum, FAA, Wine and Beer Branch, Bureau of Alcohol, Tobacco and Firearms.

Authdrity and Issuance

27 CFR PART 4—LABELING AND ADVERTISING OF WINE is amended as follows:

1. The authority citation for Part 4 continues to read as follows:

Authority: 27 U.S.C. 205.

§ 4.25a [Amended]

2. Section 4.25a is amended—

(a) By adding the word "and" after the semi-colon at the end of paragraph (e)(3)(iii),

(b) By replacing the semi-colon and the word "and" with a period at the end of paragraph (e)(3)(iv), and

(c) By removing paragraph (e)(3)(v).

Signed: December 17, 1985.

Stephen E. Higgins,
Director.

Approved: January 10, 1986.

Francis A. Keating, II.
Assistant Secretary
(Enforcement and Operations)

(Filed by the Office of the Federal Register on January 29, 1986 8:45 am and published in the Federal Register for January 30, 1986 51 F.R. 3773)

TITLE 27—ALCOHOL, TOBACCO PRODUCTS AND FIREARMS —CHAPTER I—BUREAU OF ALCOHOL, TOBACCO AND FIREARMS, DEPARTMENT OF THE TREASURY

Lodi Viticultural Area

T. D. ATF-223

27 CFR Part 9

AGENCY: Bureau of Alcohol, Tobacco and Firearms, Treasury.

ACTION: Treasury decision, final rule.

SUMMARY: The Bureau of Alcohol, Tobacco and Firearms (ATF) is establishing an American viticultural area located in Sacramento and San Joaquin counties, California, to be known as "Lodi." This final rule is the result of a petition submitted by a representative of the Lodi District Vintners Association. The establishment of viticultural areas and the subsequent use of viticultural area names in wine labeling and advertising will allow wineries to better designate the specific grape-growing area where their wines come from and will enable consumers to better identify wines they purchase.

EFFECTIVE DATE: This final rule is effective March 17, 1986.

FOR FURTHER INFORMATION CONTACT: Lori Weins, Technical Aide, FAA. Wine and Beer Branch, Bureau of Alcohol, Tobacco and Firearms, 1200 Pennsylvania Avenue, NW., Washington, DC 20226 (202-566-7626).

SUPPLEMENTARY INFORMATION:

Background

On August 23, 1978, ATF published Treasury Decision ATF-53 (43 FR 37672, 54624) revising regulations in 27 CFR Part 4. These regulations allow the establishment of definite viticultural areas. The regulations also allow the name of an approved viticultural area to be used as an appellation of origin on wine labels and in wine advertisements.

On October 2, 1979, ATF published Treasury Decision ATF-60 (44 FR 56692) which added a new Part 9 to 27 CFR providing for the listing of approved American viticultural areas, the names of which may be used as appellations of origin.

Section 4.25a(e)(1), Title 27, CFR, defines an American viticultural area as a delimited grape-growing region distinguishable by geographical features, the boundaries of which have been delineated in Subpart C of Part 9.

Section 4.25a(e)(2), outlines the procedure for proposing an American viticultural area. Any interested person may petition ATF to establish a grape-growing region as a viticultural area. The petition should include—

(a) Evidence that the name of the proposed viticultural area is locally and/or nationally known as referring to the area specified in the petition;

(b) Historical or current evidence that the boundaries of the viticultural area are as specified in the petition;

(c) Evidence relating to the geographical characteristics (climate, soil, elevation, physical features, etc.) which distinguish the viticultural features of the proposed area from surrounding areas;

(d) A description of the specific boundaries of the viticultural area, based on features which can be found on United States Geological Survey (U.S.G.S.) maps of the largest applicable scale; and

(e) A copy of the appropriate U.S.G.S. maps with the boundaries prominently marked.

Petition

In August 1982 ATF received the petition for the establishment of the "Lodi" viticultural area. The Lodi viticultural area is bounded on the east by the Sacramento and San Joaquin County lines, on the south by the Calaveras River and Eightmile Road, and on the west by Interstate Highway 5, Hood-Franklin Road, and Franklin Boulevard. The northern boundary includes the section line running due east from Franklin Boulevard and connecting to the western end of Sheldon Road, the Central California Traction Co. Railroad, Grant Line Road, California State Highway 16, and Deer Creek. The area of close to 458,000 acres includes approximately 39,000 acres of vineyards and 15 bonded wine cellars.

Public Comments

ATF received no comments in response to Notice No. 567. Therefore, after analyzing and evaluating all of the related evidence the viticultural area is adopted as proposed.

Viticultural Area Name

The name "Lodi" was well established in the petition. The petitioner submitted many newspaper articles dating from 1956 which show that this area has been known as Lodi for many years. Wine writers such as Leon D. Adams, in his book, *The Wines of America*, (McGraw-Hill Book Company, New York, NY, 1978, Second Edition) describe the wines and climate of the Lodi region. Hugh Johnson's *The World Atlas of Wine*, (Simon and Schuster, New York, 1971), refers to Lodi as the heart of the northern Central Valley vineyards benefiting from the cooling effects of air from San Francisco Bay. Alexis Lichine, in his *New Encyclopedia of Wines and Spirits* (Alfred A. Knopf, New York, NY, 1978), described the Sacramento Valley as a region somewhat affected by the moderating influence of San Francisco Bay air, with the Lodi-Sacramento district as the dominant wine-growing area. All these authors, plus many more in various other books, wine-related magazines, and news columns have long recognized the Lodi wine district.

Geographical/Viticultural Features

The Lodi viticultural area is an inland area that is comprised mainly of alluvial fan, flood plain lands, and lower and higher terrace lands.

Although the land both north and south of the area has some similar soil structures, it is the combination of these soils with the climatically moderating effect of air from San Francisco Bay that makes this area distinctive. Any northern boundary for the Lodi viticultural area located significantly closer to Sacramento, and any other southern boundary located significantly closer to Stockton, would include land which experiences annual degree days more comparable to Sacramento and Stockton than to Lodi. To quote the United States Department of Agriculture (USDA) 1937 Soil Survey of the Lodi Area, "Owing to its location opposite the wind gap leading inland from the Golden Gate, the range in temperature is narrower than in more northerly and southerly parts of the great valley. Summer fogs are more common." Temperature data covering the period 1973 through 1982 compiled by the University of California Agricultural Extension Station at Sacramento, and the United States Department of Interior, Stockton, show a mean of 3570 degree days for Lodi, 4185 for Sacramento, and 4386 for Stockton.

The primary difference on the eastern boundary is the change into the Sierra-Nevada foothills and the more upland soils. Also, an increase of rainfall is associated with an increase in elevation. To quote the same USDA

1937 Soil Survey, "Lodi, representative of valley plain, has 18.26 inches (of annual rainfall); and Valley Springs, about eight miles east of the area, and more or less representative of the foothill country, has 24.03 inches."

The area west of Interstate Highway 5 and Franklin Boulevard is floodprone, poorly drained, delta land consisting of Ryde soils and peat. The segment of Highway 5 that is part of the western boundary is primarily located on the first firm soil east of the Sacramento River system.

Soils in the Lodi viticultural area are primarily Hanford, Delhi, or Dinuba in the alluvial fan soils; or San Joaquin, Madera, Romona, or Redding in the lower and upper terrace soils as shown in, "Soils of San Joaquin County, California" and "Soils of Sacramento County, California," University of California, Berkely, California, 1952 and 1954.

Boundaries

The eastern terminus of the southern boundary is its point of intersection with the eastern boundary of San Joaquin County. A small segment of southwestern Calaveras County has been omitted from the proposed viticultural area in consideration of the total absence of current viticultural activity, and in the belief any future viticulturalists in the segment would not desire to be identified with Lodi.

The western boundary has used part of Interstate Highway 5, which is roughly parallel to Thornton Road, and runs from one-quarter to, at most, two miles west of Thornton Road. ATF believes that this is a well defined border. At the intersection of Interstate Highway 5 and Hood-Franklin Road the boundary jogs to the east approximately one-half mile to the intersection with Franklin Boulevard which it follows northeast to the meeting point with the section line running east which extends to Sheldon Road.

The northern boundary starts from the point where Franklin Boulevard meets the section line extending due east to the western end of Sheldon Road, then continuing east along Sheldon Road to its intersection with the Central California Traction Co. Railroad then southeast along the Central California Traction Co. Railroad to its intersection with Grant Line Road, and then extending northeast along Grant Line Road parallel to the Cosumnes River. At the point where Grant Line Road intersects California State Highway 16 the boundary follows Highway 16 southeast to Deer Creek, where it proceeds east along Deer Creek until it intersects the eastern boundary of Sacramento County.

The eastern boundary excludes a small area of southwest Calaveras County including the principal community, Valley Springs. The boundary follows the eastern boundaries for Sacramento and San Joaquin Counties from Deer Creek in the north to the Calaveras River in the south.

Miscellaneous

ATF does not wish to give the impression by approving Lodi as a viticultural area that it is endorsing the quality of the wine from this area. ATF is approving this area as being distinct and not better than other areas. By approving this area, Lodi wine producers would be allowed to claim a distinction on labels and in advertisements as to the origin of the grapes. Any commercial advantage gained can only come from consumer acceptance of Lodi wines.

* * * * *

Drafting Information

The principal author of this document is Lori D. Weins, FAA, Wine and Beer Branch, Bureau of Alcohol, Tobacco and Firearms.

List of Subjects in 27 CFR Part 9

Administrative practice and procedure, Consumer protection, Viticultural area, Wine.

Authority and Issuance

27 CFR Part 9—American Viticultural Areas is amended as follows:

PART 9—[AMENDED]

Par. 1. The authority citation for Part 9 continues to read as follows:

Authority: 27 U.S.C. 205.

Par. 2. The table of sections in 27 CFR Part 9, Subpart C, is amended to add the title of § 9.107 as follows:

Subpart C—Approved American Viticultural Areas

Sec.

* * * *

9.107 Lodi

Par. 3. Subpart C is amended to add § 9.107 as follows:

§ 9.107 Lodi.

(a) *Name.* The name of the viticultural area described in this section is "Lodi."

(b) *Approved maps.* The appropriate maps for determining the boundaries of the Lodi viticultural area are 20 U.S.G.S. 7.5 minute series maps, and are titled as follows:

(1) "Valley Springs SW, Calif." (1962, photoinspected 1973);

(2) "Linden, Calif." (1968);

(3) "Waterloo, Calif." (1968, photoinspected 1978);

(4) "Lodi South, Calif." (1968, photorevised 1976);

(5) "Terminous, Calif." (1978);

(6) "Thornton, Calif." (1978);

(7) "Bruceville, Calif." (1968, photorevised 1980);

(8) "Florin, Calif." (1968, photorevised 1980);

(9) "Elk Grove, Calif." (1968, photorevised 1979);

(10) "Sloughouse, Calif." (1968, photorevised 1980);

(11) "Buffalo Creek, Calif." (1967, photorevised 1980);

(12) "Folsom SE, Calif." (1954, photorevised 1980);

(13) "Carbondale, Calif." (1968, photorevised 1980);

(14) "Goose Creek, Calif." (1968, photorevised 1980);

(15) "Clements, Calif." (1968);

(16) "Wallace, Calif." (1962);

(17)"Lodi North, Calif." (1968);

(18) "Galt, Calif." (1968, photoinspected 1978);

(19) "Clay, Calif." (1968); and

(20) "Lockeford, Calif." (1968, photoinspected 1973);

(c) *Boundaries.* The Lodi viticultural area is located in California in the counties of Sacramento and San Joaquin. The beginning point is located in the southeast corner of the viticultural area where the Calaveras River intersects the eastern boundary of San Joaquin County ("Valley Springs, SW" U.S.G.S. map).

(1) The boundary proceeds west along the Calaveras River to the point of intersection with Eightmile Road (Beginning in the "Valley Springs, SW" map, passing through the "Linden" map and ending in the "Waterloo" map);

(2) Thence west along Eightmile Road to the point of intersection with Interstate Highway 5 (beginning in the "Waterloo map and ending in the "Lodi South" map);

(3) Thence north and then northwest along Interstate Highway 5 to its intersection with an unnamed road (known locally as Hood-Franklin

Road) (beginning on the "Lodi South" map passing through the "Terminous," and "Thornton," maps and ending in the "Bruceville" map);

(4) Thence east along Hood-Franklin Road to its intersection with Franklin Boulevard (beginning in the "Bruceville" map and ending to the "Florin" map);

(5) Thence northeast along Franklin Boulevard to its meeting point with the section line running due east and connecting to the western end of Sheldon Road ("Florin" map);

(6) Thence due east along the section line connecting to the western end of Sheldon Road ("Florin" map);

(7) Thence east along Sheldon Road to its intersection with the Central California Traction Co. Railroad (beginning in the "Florin" map and ending in the "Elk Grove" map);

(8)Thence southeast along the Central California Traction Co. Railroad to its point of intersection with Grant Line Road ("Elk Grove" map);

(9) Thence northeast along Grant Line Road to the point of intersection with California State Highway 16 (beginning in the "Elk Grove" map, passing through the "Sloughhouse" map and ending in the "Buffalo Creek" map);

(10) Thence southeast along California State Highway 16 to the point of intersection with Deer Creek (beginning in the "Buffalo Creek" map and ending in the "Folsom, SE" map);

(11) Thence northeast along Deer Creek to the point of intersection with the eastern boundary of Sacramento County ("Folsom, SE" map);

(12) Thence southeast along the eastern boundary of Sacramento County and then along the eastern boundary of San Joaquin County to the point of intersection with the Calaveras River, the point of beginning (beginning in the "Folsom SE" map, passing through the "Carbondale," "Goose Creek." "Clements," and "Wallace" maps and ending in the "Valley Springs, SW map).

Signed: January 14, 1986.

Stephen E. Higgins,
Director.

Approved: January 29, 1986.

Edward T. Stevenson,
Deputy Assistant Secretary
(Operations)

(Filed by the Office of the Federal Register on February 12, 1986 8:45 am and published in the Federal Register for February 13, 1986 51 F.R. 5323)

TITLE 27—ALCOHOL, TOBACCO PRODUCTS AND FIREARMS—CHAPTER 1—BUREAU OF ALCOHOL, TOBACCO AND FIREARMS, DEPARTMENT OF THE TREASURY

Beer

T.D. ATF-224

27 CFR Parts, 7, 25, 245, and 252

AGENCY: Bureau of Alcohol, Tobacco and Firearms, Treasury.

ACTION: Treasury decision, final rule.

SUMMARY: The Bureau of Alcohol, Tobacco and Firearms (ATF) is revising and recodifying regulations regarding the qualification of breweries, the production and removal of beer and cereal beverages, and the tax payment of beer. The regulations in 27 CFR Part 245 are reissued as Part 25. These regulations incorporate a large number of IRS revenue rulings and AFT rulings. Many substantive changes are adopted which will relieve the regulatory burden on brewers, and result in some cost savings.

EFFECTIVE DATE: May 1, 1986.

FOR FURTHER INFORMATION CONTACT:

John A. Linthicum or Ed Reisman, FAA, Wine and Beer Branch, Bureau of Alcohol, Tobacco and Firearms, Washington, DC 20226, Telephone: 202-566-7626.

SUPPLEMENTARY INFORMATION:

General

This final rule is part of ATF's plan to review, update, and reissue all of its regulations. Restrictive regulations have been deleted where possible. Twenty eight IRS and ATF rulings have been incorporated into the regulations or declared obsolete. The number of regulatory sections has been reduced to 146, eliminating 27 sections. Ten letterhead notices or applications have also been eliminated leaving only 18 notices or applications, most of which are one-time notices. Four Government forms have been replaced by commercial records while one additional form has been eliminated altogether. Finally, all of the sections in this part have been rewritten to improve their clarity and understanding.

Notice Number 449

ATF published Notice No. 449 in the **Federal Register** on February 3, 1983 (48 FR 4803). That notice proposed revision of the beer regulations and reissuance of 27 CFR Part 245 as 27 CFR Part 25. A 90-day comment period was provided for the submission of written comments.

In response to Notice No. 449, ATF received 5 written comments. Respondents were the United States Brewers Association (U.S.B.A.), the G. Heileman Brewing Company, the Miller Brewing Company, Anheuser-Busch Companies, and the Surety Association of America, an association representing over 500 companies which write surety bonds.

All respondents generally favored the proposed regulations. Their specific comments are set forth below according to subject matter. ATF received no requests to hold a public hearing and consequently did not hold a hearing regarding these regulations.

Storage of Taxpaid Beer

G. Heileman requested that § 25.23, 25.24, and 25.213 be amended to provide for the storage of taxpaid beer on brewery premises. Heileman stated that required recordkeeping is adequate to protect the revenue. Their comment envisions automatic extension or curtailment of brewery premises to accommodate taxpaid beer, and a simpler method of obtaining ATF approval for such storage.

In the past, ATF has approved numerous variances allowing brewers to store taxpaid beer of other brewers' production on brewery premises. In view of the many past approvals, ATF is authorizing storage of taxpaid beer in § 25.24 under the following conditions:

(1) Taxpaid beer may not be of the brewer's own production;

(2) Taxpaid beer will be segregated in such a manner as to preclude mixing with untaxpaid beer;

(3) The brewer will have a wholesaler's or importer's permit, when required, and keep appropriate records of the taxpaid beer;

(4) Taxpaid beer will be in packages or kegs, i.e., no bulk beer; taxpaid beer may not be relabeled;

(5) Taxpaid beer transactions will not be shown on required brewery records;

(6) The brewer will purchase a special tax stamp as a wholesaler, if required; and

(7) The regional director (compliance) may require physical segregation of taxpaid beer or marking to show the status of taxpaid beer, if necessary to protect the revenue.

Beer of the brewer's own production being returned to the brewery is eligible for an offset under § 25.159 if returned to the brewery from which removed, or for an adjustment to the tax return if removed from another brewery under

§ 25.213. This beer may not be stored taxpaid at the brewery premises under § 25.24.

Marking of Rooms and Tanks

Anheuser-Busch and Miller requested deleting the requirement in § 25.32 to mark each room or division of the brewery with a sign designating its use. Miller also suggested eliminating the requirement in § 25.32 to mark the serial number on each tank in the brewery. Both brewers stated these are unnecessary burdens on the industry and of little value.

ATF agrees that there is little benefit to require marking each room or division of a brewery with a sign designating its use. Consequently, this requirement was dropped by deleting proposed § 25.32.

With respect to marking serial numbers (and capacities marked on tanks under § 25.35(a)), ATF believes these markings have value in taking inventories at breweries, both for brewers and for ATF officers. Therefore, this requirement is not changed. As proposed, this section does not require the "use" to be marked on each stationary tank.

Measuring Systems

Subpart E, Measurement of Beer, requires brewers to measure the quantity of beer transferred from brewery cellars to packaging operations. The actual system of measurement is left to the brewer who may now use the system best suited to brewery operations. A brewer may continue to employ a beer meter or may use other systems such as a gauge glass or tank readings. Under § 25.42, the brewer is required to test and adjust meters, gauge glasses, or other devices used, to insure their accuracy and is required to keep records of those tests.

No comments were addressed to this subpart and Subpart E is adopted without change from the notice.

Brewery Qualifications

Subpart G, Qualifications of a Brewery, contains regulations relating to the filing of notices and qualifying documents (except bonds). This subpart replaces Part 245; Subpart G, Notices; Subpart J, Approval of Documents; Subpart L, Changes in Name, Proprietorship, Control, Location, Premises, and Equipment; and Subpart M, Notice of Discontinuance of Business.

Brewer's notice. The brewer's notice, Form 27-C, is redesignated Form 5130.10.

Under Subpart G, the brewer's notice remains in effect on a continuing basis; it does not require renewal every 4 years. However, under § 25.71, the regional director (compliance) may at any time require a brewer to give a superseding notice in conjunction with the filing of a new brewer's bond.

Section 25.71 also allows brewers to file amended notices within 30 days of a change rather than within 10 days of the change. Changes in proprietorship or in partnership generally require the filing of a new notice before commencing business. Section 25.74 allows brewers to file a list of changes in the stockholders in the corporation annually on July 1, rather than within 30 days of the changes.

Under § 25.66, brewers no longer need to submit articles of incoporation with the brewer's notice. However, this section requires that the articles of incorporation, corporate bylaws, and certificate authorizing the brewer to do business in the State be kept available at the brewery for inspection by ATF officers. Miller requested clarification of this section to allow these corporate documents be made available for inspection at the brewer's home brewery, when in the case of a multiplant company, this information is referenced in the various brewers notices to the brewer's notice covering the home brewery.

Miller's request was anticipated by the proposed regulations. However, to clarify their intent, § 25.66(d) states that these documents need only be available for inspection at the brewer's home brewery. Each brewer's notice filed by a multiplant brewer will also be required to state the location where these corporate documents may be examined.

Miller also requested amendment of § 25.75 to delete the requirement that new brewer's notices be filed due to changes in officers or directors of the corporation. As an alternative, they suggested that only a new notice for the brewer's home brewery be filed to reflect such changes. ATF finds the intent of §§ 25.62(b) and 25.75 is to allow for filing of a brewer's notice only at the brewer's home brewery when this information is incorporated by reference under § 25.62(b) at other plants. However, § 25.75 has been modified to make it clear that only the brewer's notice at the home brewery need be amended due to changes in offices and directors.

The requirement to include a list of major brewery equipment on the brewer's notice has been deleted. Also deleted is the requirement to include copies of certificates issued by offices where brewer's trade names are registered. Several elements have been added to the brewer's notice. These include a statement of the brewer's business day, evidence of control to allow transfers of beer without payment of tax between breweries, and the statement of process by which a brewer will render beer unfit for beverage use.

Section 25.62, Data for notice, simplifies existing instructions relating to the filing of corporate documents and the description of the brewery.

Although ATF will not require brewers to file new brewer's notices with the effective date of these regulations, because of the changes in the form, a new and complete notice will be required the next time a brewer intends to file a new or amended brewer's notice.

Statement of process. Fermented beverages produced and marketed under the designations of "lager" or "malt liquor" have been added to those for which no statement of process is required ("beer," "ale," "porter," and "stout"). Products such as flavored beer, flavored malt liquor, cereal beverages, "malt beverages," and the like still require the filing of a statement of process under §§ 25.62(a)(10) and 25.67.

A new section, § 25.67, covers the statement of process. It requires that the base product conform to the definition of "beer." It is ATF's position that all fermented products (except sake, a wine which is included under "Beer," and cereal beverages which are nontaxable) produced by a brewer should have the characteristics of beer in order to insure their proper tax classification, and to insure that they may be produced at a brewery.

G. Heileman commented that proposed § 25.67 required products for which a statement of process was filed to have the characteristics of "beer" as defined in § 25.11. Heileman noted that cereal beverages are not "beer" and not subject to tax, but are covered by a statement of process. They further requested that all regulatory requirements concerning cereal beverages be relaxed, including the requirement to file a statement of process.

Section 25.67 has been modified by stating that cereal beverages need not have the characteristics of "beer." However, ATF believes that it is important to file statements of process for cereal beverages to insure that their manufacture will result in a product which is non-taxable. Similarly, ATF believes that a statutory change in the Internal Revenue Code would be necessary to eliminate other requirements relating to cereal beverages.

Section 25.67 requires brewers who change a statement of process to receive ATF approval prior to using the changed process. Prior approval of a brewer's statement of process will insure proper tax classification of products produced at breweries, and will insure that only beverages which may be produced at breweries are so produced. This change is consistent with the approval of formulas for wine or distilled spirits products prior to their production.

Incorporation of qualifying documents by reference. Section 25.62(b) permits a brewer to incorporate certain organizational documents by reference into the brewer's notice. These organizational documents may be filed for any type of premises such as a distilled spirits plant or another brewery, and may be filed in any ATF region.

Plats. The requirement for brewers to prepare and submit plats of the brewery premises, now contained in Subpart I of Part 245, is deleted.

Alternation of operations. In response to several inquiries from brewers wishing to produce or bottle wine, a new section has been added to Subpart G. Under § 25.81, a brewer may alternate a portion of the brewery between a brewery and a bonded winery or a taxpaid wine bottling house. After receiving approval of the qualifying documents as a bonded or taxpaid wine premises, and obtaining a new brewer's bond or consent of surety, a brewer may alternate to a wine premises by filing a notice with the ATF area supervisor prior to the change in premises. All beer must be removed prior to qualifying the premises as a bonded or taxpaid wine premises, and all wine must be removed prior to alternating the premises back to a brewery. Records of wine and other requirements relating to wine are found in Parts 231 and 240 of this chapter.

Bonds and Consents of Surety

Only one comment, from the Surety Association of America, was addressed to surety bonds. All proposed regulations dealing with bonds have been adopted without change. Anheuser-Busch commented on allowing surety bonds to be continuing rather than requiring resubmission every 4 years. ATF, however, cannot adopt this comment since 25 U.S.C. 5401 specifically requires a new bond every 4 years. The Brewer's Bond, Form 1566, is renumbered Form 5130.22, and the Brewer's Bond Continuation Certificate. Form 1566-A, is renumbered Form 5130.23.

Under § 25.93, the penal sum of the bond would be equal to 10 percent of the amount of tax a brewer would be liable for during a calendar year during the period of the bond. For example, if a small brewer removed 300,000 barrels of beer a year subject to tax and made no other removals, the penal sum of the bond would be determined as follows:

60,000 barrels @ \$7 = \$420,000
240,000 barrels @ \$9 = \$2,160,000
Annual liability = \$2,580,000.

The penal sum would be 10 percent of this or \$258,000. A brewer would, however, be free to obtain a bond with a greater penal sum. Maximum and minimum penal sum remain at \$500,000 and \$1,000, respectively.

With the change in calculating the penal sum, § 25.175 requires brewers to prepay the tax on removals when their outstanding tax liability exceeds the limits of coverage on the bond (when less than the maximum penal sum), until the outstanding tax liability is reduced below the bond coverage. Rules for prepayments are contained in § 25.175.

These changes are intended to aid small brewers in obtaining brewer's bonds and to allow them to purchase smaller bonds.

Special Tax Stamps

Section 25.112 recognizes that many brewers are wholesale dealers in beer. Brewers who purchase for resale beer produced by other brewers are required to purchase special tax stamps as wholesalers. ATF notes that brewers purchasing beer from other brewers or importing beer and storing it taxpaid on brewery premises under § 25.24 are liable for special tax as wholesalers; the exemption in 26 U.S.C. 5113(a) does not apply to sales of other brewers' taxpaid beer.

Marks, Brands and Labels

Subpart J, Marks, Brands and Labels, contains requirements for the marks on bottles, cans, kegs, barrels, and other containers used to remove beer from the brewery.

Marks on barrels and kegs, bottles, and cans. Under § 25.141, a brewer may utilize a coding system to show the actual place of production when the brewer operates two or more breweries. A brewer need only notify the regional director (compliance) of the coding system to be used, rather than apply to use a particular coding system. Similarly, a brewer may use a coding system for labels used on bottles and cans upon notification to the regional director (compliance) under § 25.142.

Although not incorporated into § 25.141, ATF notes that barrels or kegs need not be owned by the brewer and may be leased if they bear the required markings of the brewer filling them.

Tolerance in filling bottles and cans. Section 25.142, Bottles, incorporates Revenue Ruling 71-227 which defines "good commercial practice" in the filling of bottles and cans, and establishes a tolerance from the stated label fill. Under the revenue ruling, the tolerance was not more than plus or minus 0.5 percent, determined by comparing the brewer's fill test records with stated label contents, calculated on not less than 3 consecutive months.

The ruling is further modified by establishing the tolerance on each 3 month period. This removes any ambiguity in application of the section while providing a long enough time period to allow for normal fluctuations in filling bottles and cans. A statement of tax liability has also been inserted into the section. Although no tax will be collected on removals when the fills are within the prescribed tolerance (±0.5%) in a three month period, and when filling is conducted in compliance with good commercial practice, the brewer is liable for tax on the *entire amount* of overfill when the fill tolerance has been exceeded for a three month period, or when the brewer does not fill in compliance with good commercial practice. This statement reflects long-standing ATF policy on overfills which is incorporated in regulations in § 25.156 for keg beer (formerly § 245.113).

Case markings. Under § 25.143, a brewer may use unmarked cases when cartons containing beer or the visible portions of bottles or cans within the case show the required markings. If the required markings are on the case, they may be placed anywhere on the case including the bottom.

Other markings. Under § 25.145, the designation "beer" is included with the mandatory markings on bulk containers of beer removed from a brewery without payment of tax, for export or for transfer to another brewery of the same brewer.

Tax on Beer

Subpart K contains regulations concerning the determination and payment of tax on beer. Sections 25.156 and 25.157 are modified by requiring taxable removals to be summarized daily by rounding to the second decimal place rather than being reduced to the third decimal place by dropping the 4th and

5th decimal places. Miller Brewing Company questioned the need to compute quantities to the 5th decimal place such as the table of cases in § 25.158. ATF, however, is retaining the requirement to compute barrelage quantities to five decimal places since a very accurate factor per case is necessary to insure accurate barrelage quantities when hundreds of thousands of cases are removed subject to tax every day at large breweries. The resulting barrelage quantity may, however, be rounded to two decimal places rather than three with no loss of accuracy.

Size of containers. The tax computation on bottled beer in § 25.158 reflects a barrel equivalent for cases containing 48-7 oz. bottles. This size was added at the request of both Miller and Anheuser-Busch. Corrections were made in the barrel equivalents for cases of 40-7 oz. bottles, 48-10 oz. bottles, and 50-12 oz. bottles.

In their comment, Heileman requested that the limitations on the size of containers in which beer may be removed from the brewery be eliminated or expanded.

ATF notes that under § 25.158, beer may be removed in bottles and cans of any size, including beer in unlisted case sizes. Brewers may not remove beer taxpaid in containers larger than a hogshead (62 gallons) by virtue of the language of 26 U.S.C. 5412, although regulations provide for removal of beer in bulk containers for purposes other than for consumption or sale (export, transfer between breweries, use in manufacturing). ATF is not at this time adopting new sizes for barrels or kegs outside of those fractional parts authorized by § 25.156 since no need for additional keg sizes has been shown. We are, however, receptive to additional keg sizes if a need for them is demonstrated.

Offsets. Section 25.159 contains the provisions of ATF Ruling 79-6, somewhat modified. This section prohibits a brewer from receiving an offset or deduction for beer returned to the brewery if the brewer does not issue credit to the customer who returned the beer within 30 days after the return of the beer to the brewery. A brewer who takes an offset or deduction for returned beer, but who does not timely credit the customer for an amount at least equal to the tax, is required to make an increasing adjustment on the next tax return.

Prepayment of tax. Section 25.174 allows a brewer to prepay tax on removals of beer when the penal sum of a brewer's bond (in less than the maximum penal sum) is not sufficient to cover outstanding tax liability.

Removal of Beer Without Payment of Tax

All provisions of Part 245 relating to the removal of beer from a brewery without payment of tax appear in Subpart L. Removals Without Payment of Tax.

Transfer of beer between breweries. Regulations governing the transfer of beer between breweries of the same ownership are included in § § 25.181.25.186.

Form 2035, Notice of Transfer of Untaxpaid Beer, has been eliminated. In place of this form, § 25.186 requires the shipping brewer to prepare a commercial record for invoice for the beer to be transferred. This invoice is serially numbered and information shown is similar to that appearing on Form 2035.

The shipping brewer will prepare the invoice, in duplicate, and upon shipment furnish the original to the receiving brewer and file the other copy. The receiving brewer will note any discrepancy in the beer received on a copy of the invoice and maintain this invoice with the brewery records. These invoices will be used by both brewers to prepare their daily records and their monthly reports.

Under § 25.181, the shipping brewer may reconsign beer while in transit or may return beer to the shipping brewery for any reason, and beer may be reconsigned to any brewery of the same ownership. When beer is reconsigned during transit, § 25.186 requires the shipping brewer to void all copies of the first invoice and prepare a new invoice showing the new recipient, or to mark all copies of the original invoice with "Reconsigned to," followed by the name and address of the new receiving brewery. The new invoice will be distributed and filed in the same manner as the original invoice.

Section 25.184 requires a brewer to file a claim for remission of tax liability on beer lost during transit when the loss exceeds 2 percent of the quantity transferred. As proposed, this section would have also required immediate reporting of loss of any beer in cases or in kegs or barrels to the regional director (compliance). Miller objected to this proposal on the basis that it would increase paperwork and have little beneficial effect. ATF agrees with Miller's comment and has deleted proposed § 25.184(d)(2). Brewers must continue to make immediate report of losses due to theft or other unusual reason.

Removal of beer unfit for beverage use. Under § 25.191, a brewer may deliberately render beer unfit for use and remove it without payment of tax for use in manufacturing, as well as remove beer which had unintentionally become unfit for beverage use. An application is no longer required; however, if brewers intend to render beer unfit for beverage use, they must file a statement of process as part of the brewer's notice, Form 5130.10. Section 25.192 has been clarified to allow removal of sour or damaged beer in bulk containers.

Export of Beer. Section 25.203 allows brewers to export beer without payment of tax in bulk containers (tanks, tank cars, tank trucks, tank ships, barges, or deep tanks of vessels), as well as bottles and cans or kegs and barrels. Additionally, § 25.14, tanks, vehicles and vessels, requires the same markings on bulk containers of beer removed without payment of tax from a brewery for export that are required for bulk containers removed for transfer to another brewery. A conforming change to allow export of beer in bulk containers has been made to §252.143, Containers [a new section].

Miller requested that changes be made in the export regulations, Part 252, relating to beer being exported. First, they requested that IRS Revenue Ruling 71-208 allowing use of an ocean bill of lading as proof of exportation be incorporated into the part. They also requested that "Export" marks required on cases of beer exported be deleted when export shipments are made directly by the brewer and are supported by appropriate shipping documents.

ATF agrees that IRS Revenue Ruling 71-208 concerning ocean bills of lading should be incorporated into Part 252. Consequently, a new section, § 252.43, has been added which allows use of the ocean bill of lading in lieu of Customs certification of ATF Form 1689. In addition, this section permits other proof of exportation to be used including other bills of lading and landing certificates executed by officials of foreign nations or U.S. possessions. Approval from the regional director [compliance]is no longer required for the alternate forms of export certification specified § 252.43. Alternate forms of certification not listed may be used on approval of the regional director (compliance).

ATF has also deleted the requirement to mark each case of beer with

"Export" marks when beer is directly exported by the brewer and supported by appropriate shipping records, when beer is removed to a foreign-trade zone, and when beer is removed to the military. Section 252.144 (formerly §§ 252.143 and 252.150e) is amended.

Beer for research, development or testing. Sections 25.195-196 govern removals of beer without payment of tax for analysis, research, development or testing purposes. Brewers are no longer required to apply to the regional director (compliance) for permission to remove beer for research, development or testing.

In their comment, Miller objected to the requirement to mark each package of beer removed from the brewery for research, development or testing (but not for routine laboratory analysis) with the marking "Not for consumption or sale." Miller requested that beer shipped for these purposes in interplant transfers not be subject to this marking requirement.

ATF agrees that the marking requirement "Not for consumption or sale" is burdensome when placed on containers of beer removed for research, development or testing. Therefore, § 25.196 has been amended to delete this requirement. The section does, however, provide that the marks be applied when, in the opinion of the regional director (compliance), they are necessary to protect the revenue.

Beer Returned to Brewery

Section 25.211 requires a brewer to determine the actual quantity of beer in kegs or cases returned to the brewery. Section 25.211 incorporates Revenue Ruling 60-82 as modified by Revenue Ruling 60-296. Accordingly, a brewer need not use weight to determine the actual quantity of beer returned, but may use other accurate methods such as gauging by stick or by a gauging glass in the case of an accumulation tank. Brewers no longer need to notify the regional director (compliance) of these other methods to be used. In the case of kegs equipped with tamper-proof fittings, brewers are relieved of making balling and alcohol content determinations, thus incorporating ATF Ruling 75-26.

Miller requested that § 25.211 be amended to allow for the determination of quantity of returned beer by weighing cased beer contained in dumpsters, or weighing pallets containing returned kegs of beer, and subtracting the tare weight to determine the barrelage. Miller stated this procedure would represent a substantial savings over determining quantity of returned beer in individual containers.

ATF views Miller's comment as a significant savings in time for determining quantities of beer returned to the brewery. Consequently, § 25.211(a) has been amended to permit weighing accumulated cases or kegs of returned beer and determining the quantity of returned beer by subtracting tare weight of dumpsters, pallets, and packaging materials. ATF notes that since accumulated beer could be returned by different customers, brewers must be able to establish the quantity of beer returned by each customer in order to satisfy the recordkeeping provision of paragraph (c) and to issue credit memoranda, if appropriate.

Miller also commented that the required records in § 25.211(c) seem redundant when supporting documents are kept as required by § 25.211(d). ATF disagrees. Section 25.211(c) requires certain transactions to be kept as part of required daily records—date beer returned, quantity, the name and address of person returning beer and the brewery from which removed. The quantity of beer will be used to prepare the brewer's monthly report. Section 25.211(d) requires that these records be substantiated by credit memoranda, invoices, etc. These documents are necessary to verify that the brewer is entitled to a tax offset or adjustment for the returned beer. When a brewer is required to file notice of intention to return beer to a brewery other than the one from which removed, § 25.213 requires the notice to be filed with the ATF area supervisor of the area in which the brewery is located where the beer is to be returned.

Voluntary Destruction of Beer

Subpart N contains requirements relating to the voluntary destruction of beer. The notice of destruction is now to be filed with the area supervisor of the area in which the beer is to be destroyed. Although the proposed regulations would have made this notice optional at the discretion of the regional director (compliance), ATF is continuing to require this notice of destruction as a revenue protection measure.

Beer Purchased From Another Brewer

Under Subpart O, Beer Purchased From Another Brewer, a brewer may purchase beer in kegs from another brewer which bear the marks and brands of the purchasing brewer. In accordance with 26 U.S.C. 5413, the producing brewer will taxpay the beer. The requirement that the purchasing brewer give notice to the regional director (compliance) of intent to purchase the beer has been deleted. Similarly, the requirement that the purchasing and producing brewers make separate notations in their brewer's monthly reports of the sale or purchase of such beer has been deleted. Both purchasing and producing brewers are required to keep details of the sale or purchase of such beer in accordance with § 25.302, Daily records of operations.

Section 25.231 incorporates Revenue Ruling 62-146, which prohibits a brewer from purchasing taxpaid or tax determined beer in bottles or cans bearing the marks of the purchasing brewer.

G. Heileman commented that it is unnecessary to incorporate Revenue Ruling 62-146 into § 25.231, and that adequate recordkeeping would protect the revenue. ATF, however, disagrees. Taxpaid beer bearing markings of a brewer which did not produce the beer would not identify the brewer who taxpaid the beer. Moreover, such markings would not inform the consumer as to who actually produced the beer. This ruling implements 26 U.S.C. 5413 which allows the purchase of taxpaid beer in kegs bearing the purchasing brewer's marks, but which does not authorize the purchase of taxpaid beer in bottles with the purchasing brewer's markings. Therefore, the revenue ruling has been incorporated in § 25.231.

Section 25.232 incorporates Revenue Ruling 57-25. A brewer engaging in the business of purchasing beer from another brewer must obtain a basic permit under the Federal Alcohol Administration Act as a wholesale dealer of malt beverages.

Cereal Beverages

Section 25.11 defines "cereal beverage" as a beverage produced from malt (or a substitute) either fermented or unfermented, which contains, when ready for consumption, less than ½ of 1 percent of alcohol by volume. This definition recognizes that some cereal beverages are produced without alcoholic fermentation.

Requirements governing labeling of cereal beverages appear in § 25.242. This section incorporates Revenue Ruling 57-322, which allows the designation "Near Beer" to be used on containers of cereal beverages.

Beer Concentrate

Subpart R contains regulations relating to the process of concentration of beer and the reconstitution of beer from concentrate. The definition for concentrate has been moved into § 25.11. This definition makes it clear that concentration is an authorized process in the production of beer.

Other requirements relating to concentrate are greatly simplified. Brewers producing concentrate or reconstituting beer are no longer required to register their process of concentration or reconstitution; Form 3019 is therefore eliminated. Brewers may conduct all operations relating to beer concentrate without notifying the regional director (compliance). Criteria for the production of concentrate and for the reconstitution of beer remain in § 25.262. Labeling requirements for beer produced from concentrate are retained in § 25.263.

The requirement for brewers to obtain a consent of surety in order to concentrate beer or reconstitute beer has been deleted. These processes are now covered under the brewer's bond. Requirements for the penal sum of bonds of brewers producing concentrate or reconstituting beer have been moved into § 25.93. The basis for tax liability is changed to 10 percent of the liability on beer entered into the concentration process during a calendar year.

Regulations relating to records and reports of brewers producing concentrate or reconstituting beer have been moved into Subpart U.

Form 3020, Transfer of Concentrate Produced from Beer, has been eliminated. Under § 25.264, brewers transferring concentrate may use invoices or commercial records as a record of transfer. The shipping brewer will prepare an invoice which contains the information now found on Form 3020. Upon shipment, the original invoice will be sent to the consignee brewer and a copy retained for the shipping brewer's records.

ATF regulations relating to concentrate have been adopted as proposed. In response to the notice, ATF received 2 comments relating to concentrate; in general the respondents stated the proposed regulations were adequate to cover any concentrate operations.

In Part 252, Subpart Ga, Export of concentrate made from beer, has been combined with Subpart G, Export of beer. This has been done because export procedures for both are similar. Form 3021, Export of beer concentrate, has been eliminated. Brewers exporting beer concentrate will use Form 1689, appropriately modified to record that transaction.

Pilot Brewing Plants

Subpart S contains regulations applicable to pilot brewing plants. This subpart is adopted without change from the notice.

Operation of pilot brewing plants is on a continuing basis, and an approved application will remain current as long as the operator maintains a brewer's bond.

Operators of pilot brewing plants will use the same commerical records or invoices as required under Subpart L to cover transfers of beer from a pilot brewing plant to a brewery of the same ownership. Also, operators, no longer need apply to the regional director (compliance) for authorization to transfer beer without payment of tax from a pilot brewing plant to a brewery of the same ownership. This operation is authorized by § 25.271 which requires only that commerical records or invoices be used to document the transfer. A consent of surety is not required when transferring beer from a pilot brewing plant to a brewery since this operation is now a condition of the Brewer's Bond.

Refund or Adjustment of Tax

Regulations concerning the filing of claims for refund or credit of tax on beer lost, destroyed, rendered unmerchantable, or on which the tax was overpaid, are found in Subpart T. No comments were addressed to this subpart and it is adopted without change.

This subpart allows adjustment to the beer tax return for beer returned to a brewery, lost, destroyed, or rendered unmerchantable. Under § 25.284, brewers may simply make an adjustment, without interest, for the tax paid on beer returned to a brewery of the brewer, lost destroyed, or rendered unmerchantable. Brewers are no longer required to file claims for credit of tax and may thus receive their tax monies more quickly through use of tax adjustments. Brewers may, however, continue to file claims for refund of taxes paid and for relief from tax liability in appropriate circumstances. ATF points out that under § 25.284(e)(3), brewers may not make adjustments on their tax return for beer lost, destroyed or rendered unmerchantable if they are indemnified through insurance or otherwise in respect to the tax on the beer. Brewers must make available for inspection credit memoranda or other records documenting these transactions.

Records and Reports

Records. Section 25.291 lists all records which are required as part of the recordkeeping system at the brewery. These include transaction forms, daily records and summaries, source records used to prepare daily and summary records and monthly reports, returns, claims, and copies of applications.

Form 2051 has been eliminated as a required record. This form, Record of Brewery Operations, served as a daily summary of transactions occurring at the brewery, and was prepared using source transaction records. Anheuser-Busch commented that proposed § 25.291 was unclear as to whether daily summary records are required in addition to transaction records. The United States Brewers Association also commented that the maintenance of daily summary records is burdensome on small brewers, especially when required in addition to daily transaction records.

In response to these comments, § 25.291 has been clarified to require the keeping of daily records which may consist of source documents, invoices, or other commercial records. A separate government daily record is not required although the regional director (compliance) may require a specific format or arrangement when the information in records is not clearly or accurately shown. Daily summary records are required to be kept for some transactions; these are spelled out in § 25.292(b) and include beer and cereal beverage bottled and racked, taxable removals, and beer returned to the brewery. A daily summary is also required of brewing materials and beer and cereal beverage in process and on hand. ATF notes this requirement does not include a daily physical inventory of beer and cereal beverage, but rather a "book" inventory. Section 25.294 requires physical inventories on a monthly basis.

Section 25.292(a) lists items to be included in the brewer's daily records. This section requires a separate record of beer transferred for bottling and of beer transferred for racking. It also requires brewers to show separately the quantities of beer removed in bulk without payment of tax, as well as quantities removed in bottles and in kegs.

Anheuser-Busch objected to proposed § 25.292(j), which would have required daily records of beer used for laboratory samples at the brewery. They stated that numerous small samples are taken daily from various stages in the brewing process, and that it would be difficult to account for and determine the barrel equivalent of all samples tested on a given day.

ATF agrees that maintaining a record of every sample taken at the brewery is burdensome and does little to protect revenues. However, we believe that records should be kept of packaged beer used as samples at the brewery since this beer is recorded as bottled and poses more jeopardy to the revenue than bulk beer. Therefore, § 25.292(a)(10) has been revised to provide for recordkeeping of samples of packaged beer only.

A record of balling and the alcohol content of wort produced, beer and cereal beverage transferred for bottling or racking, transferred between breweries and to pilot brewing plants is required by § 25.293.

Monthly inventories are required by § 25.294. This section allows brewers to take inventories within 7 days of the end of the month for which taken.

Monthly report of Brewer's operations. Form 103 has been redesignated Form 5130.9. Submission of this report will be by the 15th day of the month, rather than by the 10th as previously required.

In keeping with the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35) and as an economy move to reduce the cost of government, ATF solicited information from brewers on alternatives to the brewer's monthly report. Suggested alternatives to monthly reporting included (1) monthly reporting but abbreviated format, (2) monthly reporting, quarterly statistics, (3) quarterly reporting, quarterly statistics, and (4) monthly or quarterly reporting for tax purposes only with statistical data compiled by and published by the private sector.

All brewer respondents—the United States Brewers Association, Anheuser-Busch, Heilemen, and Miller commented strongly in favor of retaining current monthly reporting and monthly reporting of statistics. The major reason given was that the information contained in the ATF monthly statistical releases is not available from other sources and is used extensively by the brewing industry, analysts, and suppliers to monitor industry performance. Quarterly statistics would not provide the data on a timely basis.

ATF finds that the data on Form 5130.9 is a necessary and vital part of its revenue protection mission with respect to breweries since it shows taxable and nontaxable removals, overages, shortages and losses at breweries. Monitoring of this form monthly enables ATF to pinpoint difficulties at individual breweries on a timely basis and to take appropriate steps to protect tax revenues.

Less frequent reporting by brewers would mask unusual transactions at a brewery which could have revenue impact or result in revenue loss to the Government. Transactions which could easily be diluted when reported on a quarterly basis. Quarterly reporting would also greatly increase the quantity of source records ATF inspectors and auditors would need to examine during revenue audits at breweries. Therefore, ATF is retaining Form 5130.9 as a monthly report form.

Retention of records. The retention period for required records has been reduced to three years in § 25.300. However, the regional director (compliance) may require records to be kept for up to three additional years if the records are necessary for the conduct of a current examination or investigation.

Reproduction of records. Under § 25.301, brewers are no longer required to obtain approval from the regional director (compliance) for the copying of records. Brewers may copy records by any process which accurately reproduces the original record and leaves a durable record capable of being preserved.

Other Issues

G. Heileman requested that the regulations be amended to allow the transfer of beer from customs custody to a brewery.

While ATF has no objection to such a proposal, we do not find this transaction authorized by 26 U.S.C. 5054(a); therefore, we cannot incorporate this suggestion into regulations.

Section 25.52 has been amended to permit regional directors (compliance) to grant emergency variances to brewers when good cause is shown, and when an emergency exists. Although Part 245 did not include this emergency provision, it exists for many other types of ATF permittees. Approval authority lies with the regional director (compliance) rather than the Director.

Paperwork Reduction Act

The collections of information contained in this final rule have been reviewed and approved by the Office of Management and Budget (OMB). In response to Notice No. 449, ATF received comments from the United States Brewers Association, Miller Brewing Company, Anheuser-Busch Companies and G. Heileman Brewing Company concerning information collection requirements. In accordance with 5 CFR Part 1320, these comments regarding records, reports or other information collection requirements are discussed in this preamble under the headings titled Brewer's notice; Tax on Beer; Transfer of beer between breweries; Export of beer; Beer for research, development or testing; Beer Returned to Brewery; Records; and Monthly report of brewer's operations.

Transitional Rules

These rules become final on May 1, 1986. Brewers may continue to operate after that date in accordance with 27 CFR Part 25 without filing new notices or bonds. Existing variances from regulations will remain in effect unless their need is eliminated by Part 25. The following changes will occur on the effective date.

Storage of taxpaid beer. Brewers may store taxpaid beer on brewery premises as of the effective date if all conditions of § 25.24 are satisfied. Existing variances regarding such storage will become obsolete.

Measuring systems for beer. As of the effective date, brewers may employ measuring systems other than meters for measuring beer. Existing variances regarding beer meters or alternate methods for measuring beer will become obsolete.

Brewers notice. Brewers may continue to operate under existing brewers notices. Variances which are not affected by the new regulations (such as use of brewery for other purposes) will remain in effect. A brewer will be required to file a new and complete brewer's notice on Form 5130.10 the first time it is necessary to file a new or amended brewer's notice.

Brewers bonds. Existing bonds or continuation certificates remain valid until their expiration. New bonds or continuation certificates will be filed on Forms 5130.22 or 5130.23. Brewers may elect to file new bonds prior to their expiration to take advantage of reduced penal sums or for other reasons.

When determining penal sums for bonds which are in less than the maximum penal sum, brewers should use future estimated removals as the basis for determining the penal sum. Regional directors (compliance) may, however, disapprove bonds which in their opinion, contain inadequate penal sums.

Beer for research, development or testing. Beer may be removed for research, development or testing under § 25.196 with no marking requirement, unless the regional director (compliance) notifies the brewer prior to the effective date that marking will be required.

Beer returned to the brewery. Unless the regional director (compliance) notifies the brewer prior to the effective date, beer may be returned to any brewery of the brewer under Subpart M without prior notice. The regional director (compliance) may, however, at any time require the brewer to give notice.

Adjustments to the beer tax return. Brewers shall take adjustments to the beer tax return for beer lost, destroyed, returned, etc. beginning with the first full return period following the effective date of the regulations. Brewers may, at their option, file for refund of tax.

Pilot brewing plants. Current registrations and bonds of pilot brewing plants remain in effect under Subpart S. At their option, operators of pilot brewing plants may file new bonds, continuation certificates, or registrations.

Records and reports. Form 2051 is obsolete as of the effective date of the regulations. As of that date, brewers are required to keep daily records and summary records specified in § 25.292.

Treatment of Revenue Rulings

Twenty eight IRS Revenue Rulings and ATF Rulings are either incorporated into the final regulations, or their provisions are obsolete. They include: I.R.S. Revenue Rulings 55-343, 1955-1, C.B. 568; 55-549, 1955-2 C.B. 699; 56-236, 1956-1 C.B. 705; 56-238, 1956-1 C.B. 711; 57-25, 1957-1 C.B. 610; 57-83, 1957-1 C.B. 563; 57-176, 1957-1 C.B. 609; 57-272, 1957-1 C.B. 563; 57-322, 1957-2 C.B. 930; 57-414, 1957-2 C.B. 978; 60-82, 1960-1 C.B. 711; 60-201, 1960-1 C.B. 712; 60-209, 1960-1 C.B. 733; 60-267, 1960-2 C.B. 618; 60-296, 1960-2 C.B. 516; 61-30, 1961-1 C.B. 795; 61-34, 1961-1 C.B. 822; 62-146, 1962-2 C.B. 380; 65-176, 1965-2, C.B. 514; 65-247, 1965-2 C.B. 515; 71-227, 1971-1 C.B. 470; ATF Rulings 72-3, 1973-ATF C.B. 84; 74-30, 1974-ATF C.B. 44; 75-26, 1975-ATF C.B. 53; 78-13, 1978-ATF C.B. 69; 79-6, ATF Quarterly Bulletin 1979-1, 24; 80-7, ATF Quarterly Bulletin 1980-2, 18.

Regulatory Reform

These final regulations significantly decrease paperwork on brewers, especially in the area of forms and applications. Under these regulations five of ten required brewery forms are eliminated. Four of these forms are replaced by commercial records and one is eliminated altogether. One additional form is eliminated pertaining to the export of beer concentrate under Part 252.

Under Part 245, brewers are required to file up to 28 letterhead applications or notices to conduct certain operations. Ten of these applications or notices become obsolete with these new regulations, and of the remaining notices or applications only 5 are recurring; the rest are one-time notices only. Many variances have been incorporated into the regulations by allowing brewers to conduct certain operations without special permission or without notifying the regional director (compliance).

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Drafting Information

The principal author of this document is Charles N. Bacon, Product Compliance Branch, Bureau of Alcohol, Tobacco and Firearms.

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List of Subjects

27 CFR Part 7

Advertising, Beer, Consumer protection, Customs duties and inspection, Imports, Labeling.

27 CFR Part 25

Administrative practice and procedure, Authority delegations, Beer, Claims, Electronic fund transfers, Excise taxes, Labeling, Packaging and containers, Reporting and recordkeeping requirements, Research, Surety bonds, Transportation.

27 CFR Part 252

Aircraft, Alcohol and alcoholic beverages, Armed forces, Authority delegations, Beer, Claims, Excise taxes, Exports, Fishing vessels, Foreign trade zones, Liquors, Reporting requirements, Surety bonds, Vessels, Warehouses, Wine.

Issuance of Regulations

Paragraph 1. The authority citation for 27 CFR Part 7 continues to read as follows:

Authority: 27 U.S.C. 205.

Paragraph 2. Part 7 is amended by (1) deleting the CROSS REFERENCES and the Part numbers which follow the table of sections and precede Subpart A, and (2) by adding a new section, § 7.4, containing related regulations which reads as follows:

PART 7—LABELING AND ADVERTISING OF MALT BEVERAGES

* * * * *

§ 7.4 Related regulations.

Regulations relating to this part are listed below:

27 CFR Part 1—Basic Permit Requirements Under the Federal Alcohol Administration Act.

27 CFR Part 4—Labeling and Advertising of Wine.

27 CFR Part 5—Labeling and Advertising of Distilled Spirits.

27 CFR Part 25—Beer.

27 CFR Part 200—Rules of Practice in Permit Proceedings.

27 CFR Part 250—Liquors and Articles from Puerto Rico and the Virgin Islands.

27 CFR Part 251—Importation of Distilled Spirits, Wines and Beer.

PART 245—[REMOVED]

Par. 3. Part 245 is removed.

Par. 4. A new Part 25 is added which reads as follows:

PART 25—BEER

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25.2 Territorial extent.
25.3 Forms prescribed.
25.4 Related regulations.
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25.11 Meaning of terms.

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25.299 Execution under penalties of perjury.
25.300 Retention and preservation of records.
25.301 Photographic copies of records.

Authority: 5 U.S.C. 552(a); 19 U.S.C. 81c, 1309; 26 U.S.C. 5002, 5051-5054, 5056, 5061, 5091, 5111, 5113, 5142, 5143, 5146, 5222, 5401-5417, 5551, 5552, 5555, 5556, 5671, 5673, 5684, 6011, 6061, 6065, 6091, 6109, 6151, 6301, 6302, 6311, 6313, 6402, 6651, 6656, 6676, 6806, 7011, 7342, 7606, 7805; 31 U.S.C. 9301, 9303-9308.

Subpart A—Scope Regulations

§ 25.1 Production and removal of beer.

The regulations in this part relate to beer and cereal beverages and cover the location, construction, equipment, operations and qualifications of breweries and pilot brewing plants.

§ 25.2 Territorial extent.

This part applies to the several States of the United States and the District of Columbia.

§ 25.3 Forms prescribed.

(a) The Director is authorized to prescribe all forms required by this part, including bonds, applications, notices, reports, returns, and records. All of the information called for in each form shall be furnished as indicated by the headings on the form and the instructions on or pertaining to the form. In addition, information called for in each form shall be furnished as required by this part.

(b) ATF Publication 1322.1, Public Use Forms, is a numerical listing of forms issued by the Bureau of Alcohol, Tobacco and Firearms. This publication is available from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

(c) Requests for forms should be mailed to the ATF Distribution Center, 7943 Angus Court, Springfield, Virginia 22153.

§ 25.4 Related regulations.

Regulations relating to this part are listed below:

27 CFR Part 7—Labeling and Advertising of Malt Beverages.

27 CFR Part 170—Miscellaneous Regulations Relating to Liquor.

27 CFR Part 252—Exportation of Liquors.

31 CFR Part 225—Acceptance of Bonds, Notes, or Other Obligations Issued or Guaranteed by the United States as Security in Lieu of Surety or Sureties on Penal Bonds.

§ 25.5 OMB control numbers assigned under the Paperwork Reduction Act.

(a) *Purpose.* This section collects and displays the control numbers assigned to information collection requirements by the Office of Management and Budget contained in 27 CFR Part 25 under the Paperwork Reduction Act of 1980, Pub. L. 96-511.

(b) *Display, OMB control number 1512-0045.* OMB control number 1512-0045 is assigned to the following sections in 27 CFR Part 25: §§ 25.23, 25.52, 25.61, 25.62, 25.64, 25.66, 25.67, 25.68, 25.71, 25.72, 25.73, 25.74, 25.75, 25.76, 25.77, 25.78, 25.81, 25.85, 25.103, 25.114, 25.141, 25.142, 25.144, 25.158, 25.167, 25.184, 25.213, 25.222, 25.272, 25.273, 25.277, 25.282, 25.299.

(c) *Display, OMB control number 1512-0052.* OMB control number 1512-0052 is assigned to the following sections in 27 CFR Part 25: §§ 25.296(b), 25.297.

(d) *Display, OMB control number 1512-0079.* OMB control number 1512-0079 is assigned to the following section in 27 CFR Part 25: § 25.65.

(e) *Display, OMB control number 1512-0141.* OMB control number 1512-0141 is assigned to the following sections in 27 CFR Part 25: §§ 25.281, 25.282, 25.286.

(f) *Display, OMB control number 1512-0333.* OMB control number 1512-0333 is assigned to the following sections in 27 CFR Part 25: §§ 25.42, 25.142, 25.186, 25.192, 25.195, 25.196, 25.211, 25.252, 25.264, 25.276, 25.284, 25.291, 25.292, 25.293, 25.294, 25.295, 25.296(a), 25.300, 25.301.

(g) *Display, OMB control number 1512-0457.* OMB control number 1512-0457 is assigned to the following section in 27 CFR Part 25: § 25.165.

(h) *Display, OMB control number 1512-0467.* OMB control number 1512-0467 is assigned to the following sections in 27 CFR Part 25: §§ 25.122, 25.160, 25.163, 25.164, 25.165, 25.166, 25.167, 25.168, 25.175, 25.224, 25.284, 25.285, 25.298.

(i) *Display, OMB control number 1512-0472.* OMB control number 1512-0472 is assigned to the following sections in 27 CFR Part 25: §§ 25.111, 25.112, 25.113, 25.114, 25.117, 25.118, 25.119, 25.121, 25.126, 25.127, 25.131, 25.132, 25.133, 25.134.

(j) *Display, OMB control number 1512-0478.* OMB control number 1512-0478 is assigned to the following sections in 27 CFR Part 25: §§ 25.24, 25.35, 25.141, 25.142, 25.143, 25.145, 25.192, 25.196, 25.231, 25.242, 25.251, 25.263.

Subpart B — Definitions

§ 25.11 Meaning of terms.

When used in this part, where not otherwise distinctly expressed or manifestly incompatible with the intent thereof, terms have the meanings given in this section.

Area supervisor. The supervisory officer of a Bureau of Alcohol, Tobacco and Firearms area office.

ATF officer. An officer of the Bureau of Alcohol, Tobacco and Firearms (ATF) authorized to perform any function relating to the administration or enforcement of this part.

Balling. The percent by weight of dissolved solids at 60°F. present in wort and beer, usually determined by a balling saccharometer.

Bank. Any commercial bank.

Banking day. Any day during which a bank is open to the public for carrying on substantially all its banking functions.

Barrel. When used as a unit of measure, the quantity equal to 31 U.S. gallons. When used as a container, a consumer package or keg containing ⅛, ⅙, ¼, ⅓, or ½ barrel, a whole barrel, or other size authorized by the regional director (compliance).

Beer. Beer, ale, porter, stout, and other similar fermented beverages (including sake or similar products) of any name or description containing one-half of one percent or more of alcohol by volume, brewed or produced from malt, wholly or in part, or from any substitute for malt.

Bottle. A bottle, can or similar container.

Bottling. The filling of bottles, cans, and similar containers.

Brewer. Any person who brews beer (except a person who produces only beer exempt from tax under 26 U.S.C. 5053(e)) and any person who produces beer for sale.

Brewery. The land and buildings described in the Brewer's Notice, Form 5130.10, where beer is to be produced and packaged.

Brewing. The production of beer for sale.

Business day. The 24-hour cycle of operations in effect at the brewery and described on the Brewer's Notice, Form 5130.10.

Cereal beverage. A beverage, produced either wholly or in part from malt (or a substitute for malt), and either fermented or unfermented, which contains, when ready for consumption, less than one-half of 1 percent of alcohol by volume.

Commercial bank. A bank, whether or not a member of the Federal Reserve System, which has access to the Federal Reserve Communications System (FRCS) or Fedwire. The "FRCS" or "Fedwire" is a communications network that allows Federal Reserve System member banks to effect a transfer of funds for their customers (or other commercial banks) to the Treasury Account at the Federal Reserve Bank of New York.

Concentrate. Concentrate produced from beer by the removal of water under provisions of Subpart R of this part. The processes of concentration of beer and reconstitution of beer are considered authorized processes in the production of beer.

Delegate. Any officer, employee, or agency of the Department of the Treasury authorized by the Secretary of the Treasury directly, or indirectly by one or more redelegations of authority, to perform the functions mentioned or described in the context.

Director. The Director, Bureau of Alcohol, Tobacco and Firearms, the Department of the Treasury, Washington, DC.

Director of the service center. A Director of an Internal Revenue Service Center.

District Director. A district director of internal revenue.

Electronic fund transfer or EFT. Any transfer of funds made by a brewer's commercial bank, either directly or through a correspondent banking relationship, via the Federal Reserve Communications System (FRCS) or Fedwire to the Treasury Account at the Federal Reserve Bank of New York.

Executed under penalties of perjury. Signed with the prescribed declaration under the penalties of perjury as provided on or with respect to the return, claim, form, or other document or, when no form of declaration is prescribed, with the declaration: "I declare under the penalties of perjury that this (insert type of document such as statement, report, certificate, application, claim, or other document), including the documents submitted in support thereof, has been examined by me and, to the best of my knowledge and belief, is true, correct and complete."

Fiscal year. The period which begins October 1 and ends on the following September 30.

Gallon. The liquid measure containing 231 cubic inches.

Losses. Known quantities of beer lost due to breakage, casualty, or other unusual cause.

Package. A bottle, can, keg, barrel, or other original consumer container.

Packaging. The filling of any package.

Person. An individual, trust, estate, partnership, association, company, or corporation.

Racking. The filling of kegs or barrels.

Region. A Bureau of Alcohol, Tobacco and Firearms region.

Regional director (compliance). The principal ATF regional official responsible for administering regulations in this part.

Removed for consumption or sale. Except when used with respect to beer removed without payment of tax as authorized by law, (a) the sale and transfer of possession of beer for consumption at the brewery, or (b) any removal of beer from the brewery.

Secretary. The Secretary of the Treasury or his or her delegate.

Service center. An Internal Revenue Service Center in any of the Internal Revenue regions.

Shortage. An unaccounted for discrepancy (missing quantity) of beer disclosed by physical inventory.

This chapter. Title 27, Code of Federal Regulations, Chapter I (27 CFR Chapter I).

Treasury account. The Department of the Treasury's General Account at the Federal Reserve Bank of New York.

U.S.C. The United States Code.

Wort. The product of brewing before fermentation which results in beer.

Subpart C—Location and Use of Brewery

§ 25.21 Restrictions on location.

A brewery may not be established or operated in any dwelling house or on board any vessel or boat, or in any building or on any premises where the revenue will be jeopardized or the effective administration of this part will be hindered.

(Sec. 201, Pub. L. 85-859, 72 Stat. 1389, as amended (26 U.S.C. 5402))

§ 25.22 Continuity of brewery.

Brewery premises will be unbroken except that they may be separated by public passageways, streets, highways, waterways, carrier rights-of-way, or partitions. If the brewery premises are separated, the parts will abut on the dividing medium and be adjacent to each other. If the brewer has facilities for loading, or for case packing or storage which are located within reasonable proximity to the brewery, the regional director (compliance) may approve these facilities as part of the brewery if the revenue will not be jeopardized.

(Sec. 201, Pub. L. 85-859, 72 Stat. 1389, as amended (26 U.S.C. 5402))

§ 25.23 Restrictions on use.

(a) *Use of brewery in production of beer or cereal beverage.* A brewery may be used only for the following purposes involving the production of beer or cereal beverages:

(1) For producing, packaging and storing beer, cereal beverages, vitamins, ice, malt, malt syrup, and other byproducts of the brewing process, or soft drinks and other nonalcoholic beverages;

(2) For processing spent grain, carbon dioxide, and yeast; and

(3) For storing packages and supplies necessary or connected to brewery operations.

(b) *Other authorized uses.* A brewer may use a brewery for other purposes, not involving the production of beer or cereal beverage, upon approval from the Director, if the purposes:

(1) Require the use of by-products or waste from the production of beer;

(2) Utilize buildings, rooms, areas, or equipment not fully employed in the production or packaging of beer;

(3) Are reasonably necessary to realize the maximum benefit from the premises and equipment and reduce the overhead of the brewery;

(4) Are in the public interest because of emergency conditions; or

(5) Involve experiments or research projects related to equipment, materials, processes, products, by-products, or waste of the brewery.

(c) *Application.* A brewer desiring to use a brewery for other purposes shall submit to the Director through the appropriate regional director (compliance), an application listing the purposes. The Director will approve the application if the use for other purposes will not jeopardize the revenue or impede the effective administration of this part and is not contrary to specific provisions of law.

(Sec. 201, Pub. L. 85-859, 72 Stat. 1389, as amended (26 U.S.C. 5411))

§ 25.24 Storage of beer.

(a) *Taxpaid beer.* Beer of a brewer's own production on which the tax has been paid or determined may not be stored in the brewery, except as provided in § 25.213. Beer produced by other brewers may be stored at the brewery under the following conditions:

(1) Taxpaid beer will be segregated in such a manner as to preclude mixing with nontaxpaid beer;

(2) If required by Part 1 of this chapter, the brewer shall have a wholesalers or importers basic permit under the Federai Alcohol Administration Act, and keep records of the taxpaid beer as a wholesaler or importer under Part 194 of this chapter.

(3) Taxpaid beer may be stored in packages;

(4) Taxpaid beer may not be relabeled;

(5) Taxpaid beer may not be shown on required brewery records;

(6) The brewer shall purchase a special tax stamp as a wholesaler, if required by Part 194 of this chapter; and

(7) The regional director (compliance) may require physical segregation of taxpaid beer, or marking to show the status of taxpaid beer, if necessary to protect the revenue.

(b) *Untaxpaid beer.* Packaged beer on which tax has not been paid or determined may be stored in any suitable location in the brewery.

(Sec. 201, Pub. L. 85-859, 72 Stat. 1389, as amended (26 US.C. 5411))

Subpart D—Construction and Equipment

Construction

§ 25.31 Brewery buildings.

Brewery buildings shall be arranged and constructed to afford adequate protection to the revenue and to facilitate inspection by ATF officers.

(Sec. 201, Pub. L. 85-859, 72 Stat. 1389, as amended (26 U.S.C. 5402))

Equipment

§ 25.35 Tanks.

Each stationary tank, vat, cask or other container used, or intended for use, as a receptacle for wort, beer or concentrate produced from beer shall:

(a) Be durably marked with a serial number and capacity, and

(b) Be equipped with a suitable measuring device. The brewer may provide meters or other suitable portable devices for measuring contents of tanks, or containers in lieu of providing each tank or container with a measuring device.

(Sec. 201, Pub. L. 85-859, 72 Stat. 1395, as amended (26 U.S.C. 5552))

§ 25.36 Empty container storage.

Empty barrels, kegs, bottles, other containers, or other supplies stored in the brewery will be segregated from filled containers.

(Sec. 201, Pub. L. 85-859, 72 Stat. 1389, as amended (26 U.S.C. 5411))

Subpart E—Measurement of Beer

§ 25.41 Measuring system required.

The brewer shall accurately and reliably measure the quantity of beer transferred from the brewery cellars for bottling and for racking. The brewer may use a measuring device, such as a meter or guage glass, or any other suitable method.

(Sec. 201, Pub. L. 85-859, 72 Stat. 1395, as amended (26 U.S.C. 5552))

25.42 Testing of measuring devices.

(a) *General requirements.* If a measuring device such as a meter or gauge glass is used to measure beer, the brewer shall periodically test the measuring device and adjust or repair it, if necessary. The brewer shall keep records of tests available for inspection by ATF officers. Records of tests will include:

(1) Date of test;

(2) Identity of meter or measuring device;

(3) Result of test; and

(4) Corrective action taken, if necessary.

(b) *Requirements for beer meters.* The allowable variation for beer meters as established by testing may not exceed ±0.5 percent. If a meter test discloses an error in excess of the allowable variation, the brewer shall immediately adjust or repair the meter. Adjustments will reduce the error to as near zero as practicable.

(c) *Authority to require tests.* If the regional director (compliance) has reason to believe that the accuracy or reliability of a measuring device is not being properly maintained, he or she may require the brewer to test the measuring device and, if necessary, adjust or repair the measuring device.

(Sec. 201, Pub. L. 85-859, 72 Stat. 1395, as amended (26 U.S.C. 5552))

Subpart F — Miscellaneous Provisions

§ 25.51 ATF officer's right of entry and examination.

An ATF officer may enter, during normal business hours, a brewery or other place where beer is stored and may, when the premises are open at other times, enter those premises in the performance of official duties. ATF officers shall make inspections as the regional director (compliance) deems necessary to determine that operations are conducted in compliance with the law and this part. The owner of any building or place where beer is produced, made, or kept, or person having charge over such premises, who refuses to admit an ATF officer acting under 26 U.S.C. 7606, or who refuses to permit an ATF officer to examine beer shall, for each refusal, forfeit $500.

(Act of August 16, 1954, 68A Stat. 872, 903, as amended (26 U.S.C. 7342, 7606))

§ 25.52 Variations from requirements.

(a) *Exceptions to construction, equipment and methods of operations.* (1) *General.* The Director may approve details of construction, equipment or methods of operations, in lieu of those specified in this part. The brewer shall show that it is impracticable to conform to the prescribed specification, and that the proposed variance: (i) will afford the protection to the revenue intended by the specifications in this part; (ii) will not hinder the effective administration of this part, and (iii) is not contrary to any provision of law.

(2) *Application.* A brewer who proposes to employ methods of operations or construction or equipment other than as provided in this part shall submit an application to the regional director (compliance). The application will describe the proposed variation and state the need for it. The brewer shall submit drawings or photographs if necessary to describe the proposed variation.

(3) *Approval by Director.* The Director may approve the use of an alternate method or procedure if:

(i) The brewer shows good cause for its use;

(ii) It is consistent with the purpose and effect of the procedure prescribed by this part and provides equal security to the revenue;

(iii) It is not contrary to law; and

(iv) It will not cause an increase in cost to the Government and will not hinder the effective administration of this part.

(4) *Exceptions.* The Director may not authorize an alternate method or procedure relating to the giving of any bond, or to the assessment, payment, or collection of tax.

(5) *Conditions of approval.* A brewer may not employ an alternate method or procedure until the Director has approved its use. The brewer shall, during the terms of the authorization of an alternate method or procedure, comply with the terms of the approved application.

(b) *Emergency variations from requirements.*

(1) *Application.* When an emergency exists, a brewer may apply to the regional director (compliance) for a variation from the requirements of this part relating to construction, equipment, and methods of operation. The brewer shall describe the proposed variation and set forth the reasons for using it.

(2) *Approval.* The regional director (compliance) may approve an emergency variation from requirements if:

(i) An emergency exists;

(ii) The variation from the requirements is necessary;

(iii) It will afford the same security and protection to the revenue as intended by the specific regulations;

(iv) It will not hinder the effective administration of this part; and

(v) It is not contrary to law.

(3) *Conditions of approval.* A brewer may not employ an emergency variation from the requirements until the regional director (compliance) has approved its use. Approval of variations from requirements are conditioned upon compliance with the conditions and limitations set forth in the approval.

(c) *Automatic termination of approval.* If the brewer fails to comply in good faith with the procedures, conditions or limitations set forth in the approval, authority for the variation from requirements is automatically terminated and the brewer is required to comply with prescribed requirements of regulations.

(d) *Withdrawal of approval.* The Director may withdraw approval of an alternate method or procedure, approved under paragraph (a) of this section, if the Director finds that the revenue is jeopardized or the effective administration of this part is hindered by the approval. The regional director (compliance) may withdraw approval of an emergency variation from requirements, approved under paragraph (b) of this section, if the regional director (compliance) finds that the revenue is jeopardized or the effective administration of this part is hindered by the approval.

(Sec. 201, Pub. L. 85-859, 72 Stat. 1395, as amended, 1396, as amended (26 U.S.C. 5552, 5556))

Subpart G — Qualification of a Brewery

Original Qualification

§ 25.61 General requirements for notice.

(a) *Establishment.* Operations as a brewer may be conducted only by a person who has given notice as a brewer under this subpart. A person may not commence the business of a brewer until the regional director (compliance) approves the brewery and the brewer's notice, including all documents made part of that notice.

(b) *Brewer's Notice, Form 5130.10.* Each person shall, before commencing business as a brewer, give notice on Form 5130.10 to the regional director (compliance) of the region in which the brewery is located. Each person continuing business as a brewer as provided in § 25.71 shall give notice on Form 5130.10 to the regional director (compliance). Each notice will be executed under penalites of prejury, and all written statements, affidavits, and other documents submitted in support of the notice will be made part of the notice.

(c) *Additional information.* The regional director (compliance) may at any time require the brewer to furnish, as part of the notice, additional information which is necessary to protect and insure collection of the revenue.

(Sec. 201, Pub. L. 85-859, 72 Stat. 1388, as amended (26 U.S.C. 5401))

§ 25.62 Data for Notice.

(a) *Required information.* The brewer shall prepare the notice on Form 5130.10 and shall include the following information:

(1) Serial number.

(2) Purpose for which filed.

(3) Name and principal business address of the brewer and the location of the brewery if different from the business address.

(4) Statement of the type of business organization and of the persons interested in the business, supported by the information listed in § 25.66.

(5) Description of brewery, as specified in § 25.68.

(6) A list of trade names which the brewer intends to use in doing business or in packaging beer.

(7) A statement of process for fermented beverages if required by § 25.67.

(8) The name and address of the owner of the land or buildings comprising the brewery, and of any mortgagee or other encumbrancer of the land or buildings comprising the brewery.

(9) The 24-hour cycle of operations at the brewery which is to be the brewer's business day.

(10) The process by which the brewery intends to render beer unfit for beverage use when beer is to be removed for use in manufacturing under §§ 25.191-25.192.

(11) Statement showing ownership or controlling interests in other breweries which will establish eligibility for the transfer of beer without payment of tax between breweries of the same ownership, as authorized in § 25.181.

(12) The date of the notice and the name and signature of the brewer or person authorized to sign on behalf of the brewer.

(b) *Incorporation by reference.* If any of the information required by paragraph (a)(4) of this section is on file with the regional director (compliance) of any ATF region in connection with the qualification of any other premises operated by the brewer, that information, if accurate and complete, may be incorporated into the brewer's notice by reference.

(Sec. 201, Pub. L. 85-859, 72 Stat. 1388, as amended (26 U.S.C. 5401))

§ 25.63 Notice of registration.

The Brewer's Notice, Form 5130.10, when approved by the regional director (compliance), will constitute the notice of registration of the brewery. The regional director (compliance) will not approve the notice until the notice and all incorporated documents are complete, accurate, and in compliance with the requirements of this part. A person may not operate a brewery until the notice required by this subpart has been approved by the regional director (compliance).

(Sec. 201, Pub. L. 85-859, 72 Stat. 1388, as amended (26 U.S.C. 5401))

§ 25.64 Maintenance of notice file.

The brewer shall maintain the approved Brewer's Notice, Form 5130.10, and all incorporated documents at the brewery premises, in complete and current condition, readily available for inspection by an ATF officer.

(Sec. 201, Pub. L. 85-859, 72 Stat. 1388, as amended (26 U.S.C. 5401))

§ 25.65 Power of attorney.

The brewer shall execute and file with the regional director (compliance) a Form 1534 (5000.8) for each person authorized to sign or act on behalf of the brewer. The Form 1534 (5000.8) is not required for persons whose authority is furnished in the Brewer's Notice, Form 5130.10.

(Sec. 201, Pub. L. 85-859, 72 Stat. 1388, as amended (26 U.S.C. 5401))

§ 25.66 Organizational documents.

The supporting information required by paragraph (a)(4) of § 25.62 includes, as applicable, the following:

(a) *Corporate documents.* (1) Corporate charter or a certificate of corporate existence or incorporation;

(2) List of directors and officers, showing their names and addresses;

(3) Extracts or digests of minutes of meetings of board of directors, authorizing certain individuals to sign for the corporation; and

(4) Statement showing the number of shares of stock or other evidence of ownership, authorized and outstanding, and the voting rights of the respective owners or holders.

(b) *Articles of partnership.* Copy of the articles of partnership or association, if any, or certificate of partnership or association if required to be filed by any State, county, or municipality.

(c) *Statement of interest.* (1) Names and addresses of all persons having 10 percent or more stock in the corporation, or other legal entity, and the nature and amount of the stockholding or other interest of each, whether the interest appears in the name of the interested party or in the name of another person. If a corporation is wholly owned or controlled by another corporation, those persons of the parent corporation who meet the above standards are considered to be the persons interested in the business of the subsidiary, and the names thereof need be furnished only upon request of the regional director (compliance); or

(2) In the case of an individual owner or partnership, the name and address of each person holding an interest in the brewery, whether the interest appears in the name of the interested party or in the name of another for that person.

(d) *Availability of additional corporate documents.* The originals of documents required to be submitted under this section, the additional documents such as the articles of incorporation, bylaws and State certificates authorizing the brewer to operate in the State where located (if other than the State in which the brewery is incorporated) shall be made available to any ATF officer upon request. In the case of multiplant brewers, these documents may be made available at the brewer's home brewery. Each brewer's notice filed by multiplant brewers will state the location where these corporate documents may be inspected.

(Sec. 201, Pub. L. 85-859, 72 Stat. 1388, as amended (26 U.S.C. 5401))

§ 25.67 Statement of process.

(a) The Brewer's Notice, Form 5130.10 will contain a statement of process for any fermented beverage which the brewer intends to produce and market under a name other than "beer," "ale," "porter," "stout," "lager," or "malt liquor."

(b) The statement of process will give the name or designation of the product, the kinds and quantities of materials to be used, the the method of manufacture, and the approximate alcohol content of the finished product.

(c) A statement of process for any fermented beverage (other than sake or cereal beverage) will not be approved unless the base product has the characteristics of beer as defined in § 25.11.

(Sec. 201, Pub. L. 85-859, 72 Stat. 1333, as amended, 1388, as amended (26 U.S.C. 5052, 5401))

§ 25.68 Description of brewery.

(a) The Brewer's Notice, Form 5130.10, will include a description of (1) each tract of land comprising the brewery, and (2) a listing of each brewery building by its designated letter or number, giving the approximate ground dimensions and the purpose for which ordinarily used.

(b) The description of the land will be in sufficient detail to enable ATF officers to determine the boundaries of the brewery.

(Sec. 201, Pub. L. 85-859, 72 Stat. 1388, as amended (26 U.S.C. 5401))

Changes After Original Qualification

§ 25.71 Amended or superseding notices.

(a) *Requirement for amended notice.* (1) When there is a change with respect to the information shown in the Brewer's Notice, Form 5130.10, the brewer shall within 30 days of the change (except as otherwise provided in this subpart) submit to the regional director (compliance) an amended notice setting forth the new information. Changed notices will be submitted in skeleton form, with unchanged items marked "No change since Form 5130.10, Serial No. ____."

(2) The regional director (compliance) may require immediate filing of an amended Form 5130.10 if the accuracy of existing documents has been affected by any change.

(b) *Requirement for superseding notice.* (1) The regional director (compliance) may require a brewer to file a new and complete notice, superseding those previously filed, in conjunction with the filing of a new bond. This superseding notice will become effective on the date of the brewer's bond or on the date of the brewer's bond continuation certificate.

(2) If the information required by § 25.62(a) (4), (5), (6), (7), (9),

and (10) is on file as part of an approved Form 5130.10 and is current, the brewer may incorporate by reference those documents as part of any superseding notice.

(Sec. 201, Pub. L. 85-859, 72 Stat. 1388, as amended (26 U.S.C. 5401))

§ 25.72 Change in proprietorship.

(a) *General.* If there is a change in the proprietorship of a brewery, the outgoing brewer shall comply with the requirements of § 25.85. The successor brewer shall, before beginning operations, qualify in the same manner as the proprietor of a new brewery. The successor brewer shall file a new notice and bond in his or her own name. Beer on hand may be transferred without payment of tax to the successor brewer and will be accounted for by that brewer.

(b) *Fiduciary.* (1) If the successor to the brewer is an administrator, executor, receiver, trustee, assignee or other fiduciary, the fiduciary may in lieu of filing a new notice and bond, file an amended notice and furnish a consent of surety extending the terms of the predecessor's bond or continuation certificate.

(2) The fiduciary shall furnish the regional director (compliance) a certified copy of the court order or other document showing qualification as fiduciary. The effective date of the qualifying documents filed by a fiduciary will be the same as the date of the order, or the date therein specified for the fiduciary to assume control. If the fiduciary was not appointed by the court, the date of the appointment will be the effective date of the qualifying documents filed by the fiduciary.

(Sec. 201, Pub. L. 85-859, 72 Stat. 1388, as amended (26 U.S.C. 5401))

§ 25.73 Change in partnership.

(a) *New notice required.* The withdrawal of one or more members of a partnership or the taking in of a new partner, whether active or silent, constitutes a change in proprietorship. Unless exempted by paragraph (b) of this section, the death, bankruptcy or adjudicated insolvency of one or more partners results in a dissolution of the partnership and a change in proprietorship. The successor shall qualify the brewery in the same manner as the proprietor of a new brewery.

(b) *Continuing partnership.* A surviving partner or partners may continue to operate the brewery for purposes of liquidation and settlement under the following conditions:

(1) Under the laws of the State where the partnership was formed, the partnership is not terminated on death or insolvency of a partner(s); and

(2) Under the laws of the State where the partnership was formed, the surviving partner(s) has the exclusive right to control and possession of the partnership assets for the purpose of liquidation and settlement; and

(3) A consent of surety is filed in which the surety and the surviving partner(s) agree to remain liable on the bond.

(c) *Settlement of partnership.* If the surviving partner(s) acquires the business on completion of the settlement of the partnership, that partner(s) shall qualify in his or her own name from the date of acquisition and give a new brewer's notice on Form 5130.10 and a new bond on Form 5130.22.

(Sec. 201, Pub. L. 85-859, 72 Stat. 1388, as amended (26 U.S.C. 5401))

§ 25.74 Change in Stockholders.

Changes in the list of stockholders furnished under the provisions of § 25.66(c)(1) shall be submitted annually by the brewer on July 1 or on any other date approved by the regional director (compliance). When the sale or transfer of capital stock results in a change in the control or management of the business, notification of the change will be made within 30 days in accordance with § 25.71.

(Sec. 201, Pub. L. 85-859, 72 Stat. 1388, as amended (26 U.S.C. 5401))

§ 25.75 Change in officers and directors.

When there is any change in the list of officers or directors furnished under the provisions of § 25.66(a)(4), the brewer shall submit, within 30 days of the change, an amended notice on Form 5130.10. If the brewer has shown to the satisfaction of the regional director (compliance) that certain corporate officers listed on the original notice have no responsibilities in connection with the operations covered by the notice, the regional director (compliance) may waive the requirements for submitting applications for amended notice to cover changes of those corporate officers. In the case of multiplant brewers, new brewers notices need not be filed for those breweries in which the lists of officers and directors are incorporated by reference in their brewer's notices under § 25.62(b).

(Sec. 201, Pub. L. 85-859, 72 Stat. 1388, as amended (26 U.S.C. 5401))

§ 25.76 Change in statement of process.

When there is a change in the information in a statement of process required by § 25.62(a)(7) for any fermented beverage produced and marketed under a name other than "beer," "ale," "porter," "stout," "lager," or "malt liquor," the brewer shall submit an amended notice and obtain approval of the notice prior to using the changed statement of process.

(Sec. 201, Pub. L. 85-859, 72 Stat. 1388, as amended (26 U.S.C. 5401))

§ 25.77 Change in location

When there is a change in the location of the brewery, the brewer shall file an amended Form 5130.10, and a new bond, Form 5130.22, or a consent of surety, Form 1533 (5000.18), in accordance with § 25.91, extending the terms of the bond or continuation certificate to cover operations at the new location. The brewer may not begin operations at the new location until the regional director (compliance) approves the required documents.

(Sec. 201, Pub. L. 85-859, 72 Stat. 1388, as amended (26 U.S.C. 5401))

§ 25.78 Change in premises.

Except as authorized in § 25.81, when the brewery is to be extended or curtailed, the brewer shall file with the regional director (compliance) an amended Form 5130.10. The additional facilities covered by the extension may not be used for the proposed purposes, and the portion to be curtailed may not be used for other than the previously approved purposes, prior to approval of Form 5130.10

(Sec. 201, Pub. L. 85-859, 72 Stat. 1388, as amended (26 U.S.C. 5401))

Alternation of Operations

§ 25.81 Alternation of brewery and bonded or taxpaid wine premises.

(a) *General.* A brewer operating a contiguous bonded winery or taxpaid wine bottling house may, as provided in this section, alternate the use of each premises by extension or curtailment.

(b) *Qualifying documents.* The brewer shall file with the regional director (compliance) and receive approval of the following qualifying documents:

(1) Form 698 (5120.25) or 2975 (5140.2) and Form 5130.10 to cover the curtailment and extension of the premises to be alternated.

(2) Special diagrams, in duplicate, delineating the brewery premises and the bonded or taxpaid wine premises as they will exist both during extension

and curtailment. The diagrams will clearly depict all areas, buildings, floors, rooms, equipment and pipelines which are to be subject to alternation in their relative operating sequence.

(3) Evidence of existing bond, consent of surety, continuation certificate, or a new bond to cover the proposed alternation of premises.

(c) *Brewer's responsibility.* After approval of qualifying documents, the brewer may alternate the designated premises pursuant to a letterhead notice submitted to the regional director (compliance) through the ATF area supervisor. The notice will contain the information required by paragraph (d) of this section. Prior to the effective date and hour of the alternation, the brewer shall (1) remove all beer on brewery premises to be alternated to bonded or taxpaid wine premises, or (2) remove all wine from bonded to taxpaid wine premises to be alternated to brewery premises.

(d) *Information for notice.* The notice required by paragraph (c) of this section will contain the following information:

(1) Plant name and address;
(2) Serial number;
(3) Effective date and hour of proposed change;
(4) Whether premises are to be curtailed or extended;
(5) Purpose of curtailment or extension;
(6) Identification of the special diagram depicting the premises as they exist when curtailed or extended; and
(7) Date of execution and signature of brewer.

(e) *Separation of premises.* The regional director (compliance) may requrie that the portion of brewery or bonded or taxpaid wine premises extended or curtailed under this section be separated, in a manner satisfactory to the regional director (compliance), from the remaining portion of the brewery or bonded or taxpaid premises.

(Sec. 201, Pub. L. 85-859, 72 Stat. 1388, as amended, 1389, as amended, 1390, as amended (26 U.S.C. 5401, 5411, 5415))

Discontinuance of Business

§ 25.85 Notice of permanent discontinuance.

When a brewer desires to discontinue business permanently, he or she shall file with the regional director (compliance) a notice on Form 5130.10. The brewer shall state the purpose of the notice as "Discontinuance of business" and give the date of the discontinuance. When all beer has been lawfully disposed of, the regional director (compliance) will approve the Form 5130.10 and return a copy to the brewer. The brewer shall file a report on Form 5130.9 showing no beer or cereal beverage on hand and marked "Final Report."

(Sec. 201, Pub. L. 85-859, 72 Stat. 1388, as amended (26 U.S.C. 5401))

Subpart H — Bonds and Consents of Surety

§ 25.91 Requirement for bond.

(a) *General.* Every person intending to commence the business of a brewer shall file a bond, Form 5130.22, as prescribed in this subpart, covering operations at the brewery, at the time of filing the original Brewer's Notice, Form 5130.10. Every brewer intending to continue the business of a brewer shall, once every 4 years, or as provided in § 25.95, execute and file a new bond, or continuation certificate as provided in § 25.97, with the regional director (compliance).

(b) *Conditions of the bond.* The Brewer's Bond, Form 5130.22, will be conditioned upon the brewer faithfully complying with all provisions of law and regulations relating to the activities covered by the bond, and upon paying all taxes imposed by 26 U.S.C. Chapter 51 and all interest and penalties incurred or fines imposed for violations of those provisions.

(c) *Additional information.* The regional director (compliance) shall require, in connection with any brewer's bond, a statement executed under the penalties of perjury, as to whether the principal or any person owning, controlling, or actively participating in the management of the business of the principal has been convicted of or has compromised any offense set forth in § 25.101(a)(1), or has been convicted of any offense set forth in § 25.101(a)(2). In the event the above statement contains an affirmative answer, the applicant shall submit a statement describing in detail the circumstances surrounding the conviction or compromise.

(d) *Bond required before beginning business.* A person may not begin business or continue business as a brewer until first receiving notice that the regional director (compliance) has approved the bond, continuation certificate, or consent of surety, as required by this part.

(Sec. 201, Pub. L. 85-859, 72 Stat. 1388, as amended (26 U.S.C. 5401); sec. 4(a), Pub. L. 91-673, 84 Stat. 2057 (26 U.S.C. 5417))

§ 25.92 Consent of surety.

A brewer may change the terms of any bond filed under this part by filing a consent of surety. Consents of surety will be executed on Form 1533 (5000.18) by the brewer and the surety on the bond, with the same formality and proof of authorization as required for the execution of a bond.

(Sec. 201, Pub. L. 85-859, 72 Stat. 1388, as amended (26 U.S.C. 5401))

§ 25.93 Penal sum of bond.

(a) *Calculation.* The penal sum of the brewer's bond will be equal to 10 percent of the maximum amount of tax, calculated at the rates prescribed by law, which the brewer will become liable to pay during a calendar year during the period of the bond on beer.

(1) Removed for transfer to the brewery from other breweries owned by the same brewer;

(2) Removed without payment of tax for export or for use as supplies on vessels and aircraft;

(3) Removed without payment of tax for use in research, development, or testing; and

(4) Removed for consumption or sale.

(b) *Concentrate.* A brewer who concentrates beer under Subpart R of this part shall calculate the penal sum of the bond by computing 10 percent of the amount of tax at the rates prescribed by law, on the maximum quantity of beer used in the production of concentrate during a calendar year. The brewer shall add this amount to the penal sum calculated under paragraph (a) of this section to determine the total penal sum of the brewer's bond.

(c) *Maximum and minimum penal sums.* The maximum penal sum of the bond (or total penal sum if original and strenghening bonds are filed) is not to exceed $150,000 when the tax on beer is to be prepaid, or $500,000 when the tax is to be deferred as provided in § 25.164. The minimum penal sum of a bond is $1,000.

(Sec. 201, Pub. L. 85-859, 72 Stat. 1388, as amended (26 U.S.C. 5401))

§ 25.94 Strenghtening bonds.

(a) *Requirement.* When the penal sum of the brewer's bond (calculated as provided in § 25.93) in effect is not sufficient, the principal may prepay the tax on beer as provided in Subpart K of this part, or give a strengthening bond in sufficient penal sum if the surety is the same as on the bond in effect. If the surety is not the same, a new bond covering the entire liability is required.

(b) *Restrictions*. A strengthening bond may not in any way release a former bond or limit a bond to less than the full penal sum.

(c) *Date of execution*. Strengthening bonds will show the current date of execution and their effective date.

(Sec. 201, Pub. L. 85-859, 72 Stat. 1388, as amended (26 U.S.C. 5401))

§ 25.95 New bond.

The regional director (compliance) may at any time, at his or her discretion, require a new bond. A new bond is required immediately in the case of insolvency of a surety. Executors, administrators, assignees, receivers, trustees, or other persons acting in a fiduciary capacity shall execute a new bond or obtain a consent of surety on all bonds in effect. When the interests of the Government so demand, or in any case when the security of the bond becomes impaired for any reason, the principal will be required to give a new bond. When a bond is found to be not acceptable by the regional director (compliance), the principal will be required immediately to obtain a new and satisfactory bond or discontinue business.

(Sec. 201, Pub. L. 85-859, 72 Stat. 1388, as amended (26 U.S.C. 5401))

§ 25.96 Superseding bond.

When the principal submits a new bond to supersede a bond or bonds in effect, the regional director (compliance) after approving the superseding bond, will issue a notice of termination for the superseded bond under the provisions of this subpart. Superseding bonds will show the current date of execution and their effective date.

§ 25.97 Continuation certificate.

If the contract of surety between the brewer and the surety on an expiring bond or continuation certificate is continued in force for a succeeding period of not less than 4 years from the expiration date of the bond or continuation certificate, the brewer may submit, in lieu of a new bond, a Brewer's Bond Continuation Certificate on Form 5130.23, executed under the penalties of perjury, by the brewer and the surety attesting to continuation of the bond. Each continuation certificate will constitute a bond and all provisions of law and regulations applicable to bonds on Form 5130.22 given under this part, including the disapproval of bonds, are applicable to continuation certificates.

(Sec. 201, Pub. L. 85-859, 72 Stat. 1388, as amended (26 U.S.C. 5401))

§ 25.98 Surety or security.

(a) *Bond coverage*. Bonds required by this part will be given with corporate surety or collateral security.

(b) *Corporate surety*. Surety bonds may be given only with surety companies holding certificates of authority from the Secretary as acceptable sureties on Federal bonds, subject to the limitations set forth in the current revision of Treasury Department Circular No. 570, Companies Holding Certificates of Authority as Acceptable Reinsuring Companies.

(c) *Revisions of Circular No. 570*. Treasury Department Circular No. 570 is published in the **Federal Register** annually as of the first workday in July. As they occur, interim revisions of the circular are published in the **Federal Register**. Copies may be obtained from the Surety Bond Branch, Financial Management Service, Department of the Treasury, Washington, DC 20226.

(d) *More than one corporate surety*. A bond may be executed by two or more corporate sureties. Each corporate surety may limit its liability in terms on the face of the bond in a specified amount. This amount may not exceed the limitations set forth for corporate security by the Secretary which are set forth in the current revision of Treasury Department Circular No. 570. The sum of the liabilities for the sureties will equal the required penal sum of the bond.

(e) *Deposit of collateral securities in lieu of corporate surety.* Bonds or notes of the United States, or other obligations which are unconditionally guaranteed as to both interest and principal by the United States, may be pledged and deposited by principals as collateral security in lieu of corporate surety in accordance with 31 CFR Part 225.

(96 Stat. 1068, 1085 (31 U.S.C. 9304-9308); sec. 201, Pub. L. 85-859, 72 Stat. 1388, as amended (26 U.S.C. 5401))

§ 25.99 Filing powers of attorney.

Each bond, continuation certificate, and each consent of surety will be accompanied by a power of attorney authorizing the agent or officer to execute the document. The power of attorney will be prepared on a form provided by the surety company and executed under the corporate seal of the company. If the power of attorney submitted is other than a manually signed original, it will be accompanied by a certificate of its validity.

(96 Stat. 1068, 1085 (31 U.S.C. 9304-9308))

Disapproval or Termination Bonds or Consents of Surety

§ 25.101 Disapproval of bonds or consents of surety.

(a) *Reasons for disapproval.* The regional director (compliance) may disapprove a bond or consent of surety if the individual, firm, partnership, corporation, or association giving the bond or consent of surety, or if any of the above entities owning, controlling or actively participating in the management of a business giving a bond as a brewer, has been previously convicted in a court of competent jurisdiction of:

(1) Any fraudulent noncompliance with any provision of law of the United States if it related to internal revenue or customs taxation of distilled spirits, wines or beer, or if the offense shall have been compromised with the individual, firm, partnership, corporation, or association on payment of penalties or otherwise; or

(2) Any felony under a law of any State or the District of Columbia, or the United States, prohibiting the manufacture, sale, importation, or transportation of distilled spirits, wines, beer, or other intoxicating liquor.

(b) *Appeal of disapproval.* If the regional director (compliance) disapproves a bond or consent of surety, the person giving the bond may appeal the disapproval to the Director, who will grant a hearing in the matter if requested by the applicant or brewer. The decision of the Director shall be final.

(Sec. 201, Pub. L. 85-859, 72 Stat. 1394, as amended (26 U.S.C. 5551))

§ 25.102 Termination of surety's liability.

The liability of a surety on a bond required by this part will be terminated only as to liability arising on or after: (a) the effective date of a superseding bond; (b) the date of approval of the discontinuance of business of the brewer; or (c) following the giving of notice by the surety as provided in § 25.103.

(Sec. 201, Pub. L. 85-859, 72 Stat. 1388, as amended (26 U.S.C. 5401))

§ 25.103 Notice by surety for relief from liability under bond.

A surety may, at any time, in writing, notify the principal and the regional director (compliance) that the surety desires after a specified date (not less than 60 days after the date of service on the principal) to be relieved of any liabilty under the bond which is incurred by the principal after the date named in the notice. The surety shall include proof of service of the notice on the principal with the notice filed with the regional director (compliance). The notice will become effective on the date named, unless the surety withdraws the notice, in writing. The surety on the bond remains liable under the bond with respect to any liability incurred by the principal while the bond is in effect.

(Sec. 201, Pub. L. 85-859, 72 Stat. 1388, as amended (26 U.S.C. 5401))

§ 25.104 Termination of bonds.

Brewer's bonds may be terminated as to liability for future removals or receipts (a) pursuant to application of the surety as provided in § 25.103, (b) on approval of a superseding bond, or (c) on notification by the principal that the business has been discontinued. On termination of the surety's liability under a bond, the regional director (compliance) will notify the principal and sureties.

(31 U.S.C. 9301, 9303)

§ 25.105 Release of collateral security.

Bonds, notes, and other obligations of the United States, pledged and deposited as security in connection with bonds required by this part will be released in accordance with 31 CFR Part 225. When the regional director (compliance) determines there is no outstanding liability against the bond and that it is no longer necessary to hold the security, he or she shall fix the date or dates on which a part or all of the security will be released. At any time prior to the release of the security, the regional director (compliance) may, for proper cause, extend the date of release of the security for an additional length of time as may be appropriate.

(31 U.S.C. 9301, 9303)

Subpart I—Special Taxes

Liability for Special Tax

§ 25.111 Brewer's special tax.

Brewers are required to pay, on or before the first day of July in each year, or before commencing operations, a special tax at the rate imposed by 26 U.S.C. 5091. Special taxes are imposed as of the first day of July in each year, or on commencing the business of a brewer. In the former case, special tax is computed for the entire year; in the latter case, special tax is computed from the first day of the month which liability is incurred until the 30th day of June following.

(Sec. 201, Pub. L. 85-859, 72 Stat. 1339, 1346, as amended (26 U.S.C. 5091, 5142))

§ 25.112 Wholesaler's special tax.

Brewers who purchase beer from other brewers for resale, including brewers purchasing beer in their own kegs or barrels, may be liable for special tax as wholesale dealers in beer under 26 U.S.C. 5111. Special taxes are imposed as of the first day of July in each year or on commencing the business of a wholesaler.

(Sec. 201, Pub. L. 85-859, 72 Stat. 1340, as amended, 1346, as amended (26 U.S.C. 5111, 5142))

§ 25.113 Each place of business taxable.

(a) *General*. A brewer incurs special tax liability at each place of business in which an occupation subject to special tax is conducted. A place of business means the entire office, plant or area of the business in any one location under the same proprietorship. Passageways, streets, highways, rail crossings, waterways, or partitions dividing the premises are not sufficient separation to require additional special tax, if the divisions of the premises are otherwise continguous.

(b) *Exception for contiguous areas.* A brewer will not incur additional special tax liability for sales of beer made at a location other than on brewery premises described on the brewer's notice, Form 5130.10, if the location where such sales are made is contiguous to the brewery premises in the manner described in paragraph (a) of this section.

(Sec. 201, Pub. L. 85-859, 72 Stat. 1347, as amended (26 U.S.C. 5143))

§ 25.114 Exemptions from dealer's special taxes.

(a) *Brewer.* A brewer is not required to pay special tax as a wholesale or retail dealer in beer because of sales, at the principal place of business or at the brewery, of beer which at the time of sale is stored at the brewery or which had been removed and stored in a taxpaid storeroom operated in connection with the brewery. Each brewer shall have only one exemption from dealer's special tax for each brewery. The brewer may designate, in writing to the regional director (compliance), that the principal place of business will be exempt from dealer's special tax; otherwise, the exemption will apply to the brewery.

(b) *Wholesale dealer.* A wholesale dealer in beer who has paid the appropriate special tax will not again be required to pay special tax as a wholesale dealer in beer because of sales of beer to wholesale or retail dealers in liquors or beer or to limited retail dealers, at the purchaser's place of business.

(Sec. 201, Pub. L. 85-859, 72 Stat. 1340, as amended (26 U.S.C. 5113))

Execution of Special Tax Returns

§ 25.117 Special tax returns.

(a) *General.* Each person required to pay special tax shall prepare a return on IRS Form 11. The return will be filed, with payment of tax, with the director of the service center serving the internal revenue district in which the taxpayer's business is located, or by hand carrying in accordance with paragraph (c) of this section.

(b) *Multiple locations.* A taxpayer subject to special tax for the same period at two or more locations shall: (1) File on special tax return, IRS Form 11 (prepared in the manner prescribed in § 25.118), with payment of tax to cover all locations. The return with tax will be filed with the director of the service center serving the internal revenue district in which the taxpayer's principal place of business (or principal office in the case of a corporate taxpayer) is located; and

(2) Prepare, in duplicate, a list identified with the taxpayer's name, address, employer identification number, class of tax, and period covered by the return. The list will show, by States, the name address of each location (including the taxpayer's principal place of business, or principal office, if subject to special tax) for which special tax is being paid. The original of the list will be attached to the IRS Form 11, as a part of the return, and the copy will be retained by the taxpayer for a period of not less than two years.

(c) *Hand carried returns.* If the return is filed by hand carrying, the taxpayer shall file it with the district director for the district in which the taxpayer's business is located or in which the taxpayer's principal place of business (or principal office in the case of a corporate taxpayer) is located.

(Act of August 16, 1954, 68A Stat. 752, as amended (26 U.S.C. 6091); sec. 201, Pub. L. 85-859, 72 Stat. 1346, as amended (26 U.S.C. 5142))

§ 25.118 Data required on IRS Form 11.

Each return on IRS Form 11 will be prepared in accordance with the instructions on the form or issued in respect to the form. Each return will include the following:

(a) If the taxpayer is an individual or a corporation, the true name of the individual or corporation;

(b) If the taxpayer is a partnership, the true name of every person comprising the partnership;

(c) The employer identification number (see §§ 25.121-25.123);

(d) The exact location of the place of business, by name and number of building or street, or if these do not exist, by some description, in addition to the post office address. In the case of one return for two or more locations as provided in § 25.117, the location to be shown on IRS Form 11 will be the taxpayer's principal place of business (or principal office in the case of a corporate taxpayer);

(e) The classes of tax; and

(f) All other information required by the form.

(Act of August 16, 1954, 68A Stat. 732, as amended, 845, as amended (26 U.S.C. 6011, 7011); sec. 1, Pub. L. 87-397, 75 Stat. 828, as amended (26 U.S.C. 6109))

§ 25.119 Execution of IRS Form 11.

(a) *Ordinary returns.* The return of an individual proprietor will be signed by the individual. The return of a partnership will be signed by any of the partners. The return of a corporation will be signed by any officer. In each case, the person signing the return shall designate his or her capacity as "individual owner," "member of firm," or, in the case of a corporation, the title of the officer.

(b) *Fiduciaries.* Receivers, trustees, assignees, executors, administrators, and other legal representatives who continue the business of a bankrupt, insolvent, deceased person, etc., shall indicate the fiduciary capacity in which they act.

(c) *Agent or attorney in fact.* If a return is signed by an agent or attorney in fact, the signature will be preceded by the name of the principal, followed by the title of the agent or attorney in fact. A return signed by a person as agent will not be accepted unless there is filed with the internal revenue office with which IRS Form 11 is required to be filed, a power of attorney authorizing the agent to perform the act.

(d) *Perjury statement.* IRS Form 11 will contain or be verified by a written declaration that it has been executed under penalties of perjury.

(Act of August 16, 1954, 68A Stat. 748, as amended, 749, as amended, 757, as amended, 845, as amended (26 U.S.C. 6061, 6055, 6151, 7011))

Employer Identification Numbers

§ 25.121 Employer identification number.

The employer identification number defined in 26 CFR 301.7701-12 of the taxpayer who has been assigned the number will be shown on each IRS Form 11, including amended IRS Form 11, filed under this subpart. Failure of the taxpayer to include the employer identification number on IRS Form 11 may result in the imposition of the penalty specified in 26 CFR 301.6676-1.

(Sec. 1, Pub. L. 87-397, 75 Stat. 828, as amended (26 U.S.C. 6109, 6676))

§ 25.122 Application for employer identification number.

Each taxpayer who files a return on IRS Form 11 and ATF Form 5000.24 shall file IRS Form SS-4 to apply for an employer identification number. The taxpayer shall apply for and be assigned one employer identification number regardless of the number of places of business for which the taxpayer is required to file a return. If a taxpayer has filed the first return, IRS Form 11 or ATF Form 5000.24, before applying for or being assigned an employer identification number, he or she shall apply within 7 days of the filing of the return. IRS Form SS-4 may be obtained from the director of an IRS service center or from any IRS district director.

(Sec. 1, Pub. L. 87-397, 75 Stat. 828, as amended (26 U.S.C. 6109))

§ 25.123 Execution of IRS Form SS-4.

(a) *Preparation.* The taxpayer shall prepare IRS Form SS-4, together with any supplementary statement, in accordance with the instructions on the form. The taxpayer shall file IRS Form SS-4 with the district director of any internal revenue district in which the taxpayer operates a business subject to special tax, unless the instructions on IRS Form SS-4 require it to be filed with the director of the service center serving the internal revenue district.

(b) *Signature.* The application will be signed by:

(1) The individual, if the taxpayer is an individual;

(2) The president, vice president, or other principal officer, if the taxpayer is a corporation;

(3) A responsible and authorized member or officer having knowledge of its affairs, if the taxpayer is a partnership or other unincorporated organization; or

(4) The fiduciary, if the taxpayer is a trust or estate.

(Sec. 1, Pub. L. 87-397, 75 Stat. 828, as amended (26 U.S.C. 6109))

Issuance of Special Tax Stamps

§ 25.125 Issuance of stamps.

Upon filing a properly executed return on IRS Form 11, together with the full remittance, the taxpayer will be issued an appropriately designated special tax stamp. If the return covers multiple locations, the taxpayer will be issued one appropriately designated stamp for each location listed on the attachment to IRS Form 11 required by § 25.117(b), but showing as to name and address, only the name of the taxpayer and the address of the taxpayer's principal place of business (or principal office in the case of a corporate taxpayer).

§ 25.126 Distribution of stamps for multiple locations.

On receipt of the special tax stamps, the taxpayer shall verify that there is one stamp for each location listed on the attachment to IRS Form 11. The taxpayer shall designate one stamp for each location and type on each stamp the address of the business conducted for which the stamp is designated. The taxpayer shall then forward each stamp to the place of business designated on the stamp.

§ 25.127 Examination of special tax stamps.

All stamps denoting payment of special tax will be kept available for inspection by ATF officers, at the location for which designated, during business hours.

(Act of August 16, 1954 68A Stat. 831, as amended (26 U.S.C. 6806); sec. 201, Pub. L. 85-859, 72 Stat. 1348, as amended (26 U.S.C. 5146))

Changes in Special Tax Stamps

§ 25.131 Change in name.

If there is a change in the corporate or firm name, or in the trade name, the brewer shall, within 30 days after the change, file with the director of the service center who issued the stamp an additional return on IRS Form 11 covering the new corporate or firm name, or trade names. The brewer shall forward the special tax stamp or stamps to the director of the service center who issued the stamp for appropriate notation with respect to the change in name.

(Act of August 16, 1954, 68A Stat. 845, as amended (26 U.S.C. 7011))

§ 25.132 Change in proprietorship.

(a) *General.* If there is a change in the proprietorship of a brewery, the successor shall obtain the required special tax stamps.

(b) *Exemption for certain successors.* Persons having the right of succession provided for in § 25.133 may carry on the business for the remainder of the period for which the special tax was paid, if within 30 days after the date on which the successor begins to carry on the business, the successor files a return on IRS Form 11 with the director of the service center who issued the stamp, which shows the basis of succession. A person who is a successor to a business for which special tax has been paid and who fails to register the succession is liable for special tax computed from the first day of the calendar month in which he or she began to carry on the business.

(Act of August 16, 1954, 68A Stat. 845, as amended (26 U.S.C. 7011); sec. 201, Pub. L. 85-859, 72 Stat. 1347, as amended (26 U.S.C. 5143))

§ 25.133 Persons having right of succession.

Under the conditions indicated in § 25.132, the right of succession will pass to certain persons in the following cases:

(a) *Death.* The widowed spouse or child, or executor, administrator, or other legal representative of the taxpayer;

(b) *Succession of spouse.* A husband or wife succeeding to the business of his or her spouse (living);

(c) *Insolvency.* A receiver or trustee in bankruptcy, or an assignee for benefit of creditors;

(d) *Withdrawal from firm.* The partner or partners remaining after death or withdrawal of a member.

(Sec. 201, Pub. L. 85-859, 72 Stat. 1947, as amended (25 U.S.C. 5143))

§ 25.134 Change in location.

If there is a change in location of a taxable place of business, the brewer shall within 30 days after the change file with the director of the service center who issued the stamp an amended return on IRS Form 11 covering the new location. The brewer shall forward the special tax stamp or stamps to the director of the service center for endorsement of the change in location. If the brewer does not file the amended return within 30 days, the brewer is required to obtain a new special tax stamp.

(Act of August 16, 1954, 68A Stat. 845, as amended (26 U.S.C. 7011); sec. 201, Pub. L. 85-859, 72 Stat. 1347, as amended (26 U.S.C. 5143))

Subpart J—Marks, Brands, and Labels

§ 25.141 Barrels and kegs.

(a) *General requirements.* The brewer's name or trade name and the place of production (city and, if necessary for identification, State) shall be permanently marked on each barrel or keg. If the place of production is clearly shown on the bung or on the tap cover, or on a label securely affixed to each barrel or keg, the place of production need not be permanently marked on each barrel or keg. No statement as to payment of internal revenue taxes may be shown.

(b) *Breweries of same ownership.* (1) If two or more breweries are owned and operated by the same person, firm or corporation (as defined in § 25.181), the place of production may be shown as provided in paragraph (a) of this section. If two or more brewery locations are shown, the place of production (including street address if two or more breweries are located in the same city) will be shown on the bung or on the tap cover or on a label securely affixed to each barrel or keg.

(2) The brewer may use a coding system on the bung or tap cover or label which will identify the place of actual production and will permit ATF officers to determine the place of production of the beer. The brewer shall notify the regional director (compliance) prior to employing a coding system.

(c) *Label approval required.* Labels or tap covers used by brewers shall be covered by certificates of label approval, Form 5100.31, when required by Part 7 of this chapter.

(Sec. 201, Pub. L. 85-859, 72 Stat. 1389, as amended (26 U.S.C. 5412))

§ 25.142 Bottles.

(a) *Label requirements.* Each bottle of beer shall show by label or otherwise the name or trade name of the brewer, the net contents of the bottle, the nature of the product such as beer, ale, porter, stout, etc., and the place of production (city and, when necessary for identification, State). No statement as to payment of internal revenue taxes may be shown.

(b) *Breweries of same ownership.* (1) If two or more breweries are owned or operated by the same person, firm, or corporation (as defined in § 25.181), the place of production may be included in a listing of the locations of breweries qualified under this part if the place of production is not given less emphasis than any of the other locations. If the location of two or more breweries is shown on the label, the place of production may be indicated either by printing, coding or other markings on the label, bottle, crown or lid.

(2) The coding system employed will permit an ATF officer to determine the place of production (including street address if two or more breweries are located in the same city) of the beer. The brewer shall notify the regional director (compliance) prior to employing a coding system.

(c) *Distinctive names.* If the brewer's name, trade name or brand name includes the name of a city which is not the place where the beer was produced, the Director may require the brewer to state the actual place of production on the label.

(d) *Tolerances.* The statement of net contents shall indicate exactly the volume of beer within the bottle except for variations in measuring as may occur in filling conducted in compliance with good commercial practice. The barrel equivalent of bottles filled during a consecutive three month period, calculated on the basis of the brewer's fill test records, may not vary more than 0.5 percent from the barrel equivalent of bottles filled during the same period, calculated on the basis of the stated net contents of the bottles. The brewer is liable for the tax on the entire amount of beer removed, without benefit of tolerance, when the fill of bottles and cans exceeds the tolerance for the three month period or when filling is not conducted in compliance with good commercial practice.

(e) *Label approval required.* Labels used by brewers shall be covered by certificates of label approval. Form 5100.31, when required by Part 7 of this chapter.

(f) *Short-fill bottles.* A brewer may dispose of taxpaid short-fill bottles of beer to employees for their use but not for resale. These bottles need not be labeled, but if labeled they need not show an accurate statement of net contents.

(Sec. 201, Pub. L. 85-859, 72 Stat. 1389, as amended (26 U.S.C. 5412))

§ 25.143 Cases.

(a) *Brewer's name.* The brewer's name or trade name will be shown on each case or other shipping container of bottled beer. A brewer may use unmarked cases to hold:

(1) Cartons of beer, if the visible portion of the cartons shows the required name; or

(2) Bottles or cans with plastic carriers, if the visible portion of the bottles or cans shows the required name.

(b) *Other information.* The brewer may show on a case or shipping container the place of production (city and, when necessary for identification, State), and the addresses of other breweries owned by the same person, firm, or corporation (as defined in § 25.181). If only one address is shown, it will be that of the producing brewery.

(Sec. 201, Pub. L. 85-859, 72 Stat. 1389, as amended (26 U.S.C. 5412))

§ 25.144 Rebranding barrels and kegs.

(a) A brewer may not use a barrel or keg which bears the name of more than one brewer, and except as provided in § 25.231, may not use a barrel or keg bearing the name of a brewer other than the producing brewer.

(b) A brewer who purchases or otherwise obtains barrels or kegs from another brewer shall premanently remove or durably cover the original marks and brands after notifying the regional director (compliance) of the proposed action. A brewer may use the barrels or kegs obtained without removing or covering the original marks and brands if the brewer: (1) Adopts a trade name substantially identical to the name appearing on the barrels or kegs; or (2) succeeds to a brewer who has discontinued business, in which case the brewer may add marks or brands, in accordance with § 25.141, which indicate ownership.

(Sec. 201, Pub. L. 85-859, 72 Stat. 1389, as amended (26 U.S.C. 5412))

§ 25.145 Tanks, vehicles, and vessels.

(a) Each brewer who transfers beer to another brewery of the same ownership (as defined in § 25.181), or who exports beer without payment of tax, as provided in § 25.203, shall plainly and durably mark each tank, tank car, tank truck, tank ship, barge, or deep tank of a vessel in accordance with paragraph (b) of this section. These marks may be placed on a label securely affixed to the route board of the container.

(b) The brewer shall mark each container with—

(1) The designation "Beer";

(2) The brewer's name;

(3) The address of the brewery from which removed;

(4) The address of the brewery to which transferred or the marks required for exportation in Part 252 of this chapter, as applicable;

(5) The date of shipment; and

(6) The quantity, expressed in barrels.

(Sec. 201, Pub. L. 85-859, 72 Stat. 1334, as amended, 1389, as amended (26 U.S.C. 5053, 5414))

Subpart K—Tax on Beer

Liability for Tax

§ 25.151 Rate of tax.

All beer, brewed or produced, and removed for consumption or sale, is subject to the tax prescribed by 26 U.S.C. 5051, for every barrel containing not more than 31 gallons, and at a like rate for any other quantity or for the fractional parts of a barrel as authorized in § 25.156.

(Sec. 201, Pub. L. 85-859, 72 Stat. 1333, as amended (26 U.S.C. 5051, 5052))

§ 25.152 Reduced rate of tax for certain brewers.

(a) *General.* Section 5051(a)(2) of Title 26 U.S.C. provides for a reduced rate of tax on the first 60,000 barrels of beer removed for consumption or sale by a brewer during a calendar year. To be eligible to pay the reduced rate of tax, a brewer:

(1) Shall brew or produce the beer at a qualified brewery in the United States;

(2) May not produce more than 2,000,000 barrels of beer per calendar year; and

(3) May not be a member of a "controlled group" of brewers whose members together produce more than 2,000,000 barrels of beer per calendar year.

(b) *Definitions.* For the purpose of determining eligibility for payment of the reduced rate of tax on beer, terms have the following meanings:

(1) *Controlled group.* A related group of brewers as defined in 26 U.S.C. 5051(a)(2)(B). Controlled groups include, but are not limited to:

(i) Parent-subsidiary controlled groups as defined in 26 CFR 1.1563-1(a)(2);

(ii) Brother-sister controlled groups as defined in 26 CFR 1.1563-1(a)(3); and

(iii) Combined groups as defined in 26 CFR 1.1563-1(a)(4). Stock ownership in a corporation need not be direct and 51% constructive ownership, defined in 26 CFR 1.1563-3, may be acquired through:

(A) An option to purchase stock;

(B) Attribution from partnerships;

(C) Attribution from estate or trusts;

(D) Attribution from corporations; or

(E) Ownership by spouses, children, grandchildren, parents, and grandparents.

(2) *Production of beer.* The production of beer as recorded in the brewer's daily records and reported in the monthly report, Form 5130.9. For the purpose of determining compliance with the 2,000,000 barrel limitation, production of beer by a brewer or a controlled group of brewers includes both beer produced at qualified breweries within the United States and beer produced outside the United States.

(c) *Brewers operating more than one brewery.* Brewers who operate more than one brewery shall include the combined production of beer at all their breweries when determining eligibility under the 2,000,000 barrel limitation. The reduced rate of tax applies to the first 60,000 barrels of beer removed for consumption or sale in a calendar year by the brewer; the brewer shall apportion the 60,000 barrels among the breweries in the manner described in the notice as provided by § 25.167(b)(3).

(d) *Controlled groups of brewers.* Members of a controlled group of brewers of beer by all member brewers when determining eligibility under the 2,000,000 limitation. The reduced rate of tax applies to the first 60,000 barrels of beer removed for consumption or sale in a calendar year by the controlled group of brewers; the controlled group of brewers shall apportion the 60,000 barrels among member brewers in the manner described in each brewer's notice as provided by § 25.167(b)(3).

(Sec. 201, Pub. L. 85-859, 72 Stat. 1333, as amended (26 U.S.C. 5052))

§ 25.153 Persons liable for tax.

The tax imposed by law on beer (including beer purchased or procured by one brewer from another) shall be paid by the brewer of the beer at the brewery where produced. The tax on beer transferred to a brewery from other breweries owned by the same brewer in accordance with Subpart L of this part shall be paid by the brewer at the brewery from which the beer is removed for consumption or sale.

(Sec. 201, Pub. L. 85-859, 72 Stat. 1334, as amended, 1389, as amended (26 U.S.C. 5054, 5413, 5414))

Determination of Tax

§ 25.155 Types of containers.

Beer may be removed from a brewery for consumption or sale only in barrels, kegs, bottles, and similar containers, as provided in this part. A container which the Director determines to be similar to a bottle or can will be treated as a bottle for purposes of this part. A container which the Director determines to be similar to a barrel or keg and which conforms to one of the sizes prescribed for barrels or kegs in § 25.156 will be treated as such for purposes of this part.

(Sec. 201, Pub. L. 85-859, 72 Stat. 1389, as amended, 1390, as amended (26 U.S.C. 5412, 5416))

§ 25.156 Determination of tax on keg beer.

In determining the tax on beer removed in kegs, a barrel is regarded as a quantity of not more than 31 gallons. The authorized fractional parts of a barrel are halves, thirds, quarters, sixths, and eighths, and beer may be removed only in kegs rated at those capacities. If any barrel or authorized fractional part of a barrel contains a quantity of beer more than two percent in excess of its rated capacity, tax will be determined and paid on the actual quantity of beer (without benefit of any tolerance) contained in the keg. The quantities of keg beer removed subject to tax will be computed to 5 decimal places. The sum of the quantities computed for any one day will be rounded to 2 decimal places and the tax will be calculated and paid on the rounded sum.

(Sec. 201, Pub. L. 85-859, 72 Stat. 1333, as amended (26 U.S.C. 5051))

§ 25.157 Determination of tax on bottled beer.

The quantities of bottled beer removed subject to tax shall be computed to 5 decimal places in accordance with the table and instructions in § 25.158. The sum of the quantities computed for any one day will be rounded to 2 decimal places and the tax will be calculated and paid on the rounded sum.

(Sec. 201, Pub. L. 85-859, 72 Stat. 1333, as amended (26 U.S.C. 5051))

§ 25.158 Tax computations for bottled beer.

Barrel equivalents for various case sizes are as follows:

Number of bottles per case	Fluid contents (ounces) of each bottle	Barrel equivalent
1	128	0.03226
1	288	.07258
4	64	.06452
6	64	.09677
6	[1]2	.10226
12	7	.02117
12	8	.02419
12	11	.03327
12	12	.03629
12	14	.04234
12	24	.07258
12	30	.09073
12	32	.09677
12	[1]1	.10226
12	40	12097
24	7	.04234
24	8	.04839
24	10	.06048
24	11	.06653
24	11½	.06956
24	12	.07258
24	14	.08468
24	16	.09677
24	[1]½	.10226
32	7	.05645
35	7	.06174
36	7	.06351
36	8	.07258
40	7	.07056
48	7	.08468
48	10	.12097
48	12	.14516
50	12	.15121

[1] Liter.

If beer is to be removed in cases or bottles of sizes other than those listed in the above table, the brewer shall notify the regional director (compliance) in advance and request to be advised of the fractional barrel equivalent applicable to the proposed case size.

(Sec. 201, Pub. L. 85-859, 72 Stat. 1389, as amended (26 U.S.C. 5412))

§ 25.159 Time of tax determination and payment; offsets.

(a) *Time and payment.* The tax on beer will be determined at the time of its removal for consumption or sale, and will be paid by return as provided in this part.

(b) *Offsets.* During any business day, the quantity of beer returned to the same brewery from which removed is to be taken as an offset against or deducted from the total quantity of beer removed for consumption or sale from that brewery on the day that the beer is returned.

(c) *Offsets not allowed.* An offset or deduction for returned beer will not be allowed if:

(1) The brewer was indemnified by insurance or otherwise in respect of the tax; or

(2) The brewer does not issue credit to the customer for the tax on the returned beer within 30 days of the return of the beer. If the tax is not timely credited after the offset or deduction is taken, the brewer shall make an increasing adjustment on the next tax return.

(Sec. 201, Pub. L. 85-859, 72 Stat. 1334, as amended, 1335, as amended (26 U.S.C. 5054, 5056, 5061))

§ 25.160 Tax adjustment for brewers who produce more than 2,000,000 barrels of beer.

Each brewer who has paid tax on beer by return, Form 5000.24, at the reduced rate of tax during a calendar year, but whose production (or the production of a controlled group of brewers of which the brewer is a member) exceeds 2,000,000 barrels of beer in that calendar year, is no longer eligible to pay tax on beer at the reduced rate of tax for any beer removed that calendar year for consumption or sale. The brewer shall make a tax adjustment for the payment of additional tax no later than the return period in which production (or the production of a controlled group of brewers of which the brewer is a member) exceeds 2,000,000 barrels of beer. The adjustment will be determined by multiplying the difference between the higher and lower rates of tax applicable to beer by the number of barrels removed by the brewer that year at the reduced rate of tax. The brewer shall make tax adjustments for all breweries where tax was paid at the lower rate that year, and shall include interest payable from the date on which tax was paid at the lower rate. In the case of a controlled group of brewers whose production exceeds 2,000,000 barrels of beer, all member brewers who paid tax at the lower rate shall make tax adjustments as determined in this section.

(Sec. 201, Pub. L. 85-859, 72 Stat. 1333, as amended (26 U.S.C. 5051))

Preparation and Remittance of Tax Returns

§ 25.163 Method of taxpayment.

A brewer shall pay the tax on beer by return on Form 5000.24, as provided in §§ 25.164, 25.173 and 25.175. The brewer shall pay the tax by remittance to the district director or the director of the service center at the time the tax return is rendered, and the remittance will be in cash, or by check or money order payable to the "Internal Revenue Service" and delivered to the district director or the director of the service center; or will be effected by an electronic fund transfer. In paying the tax, a fractional part of a cent will be disregarded unless it amounts to one-half cent or more, in which case it will be increased to one cent.

(Act of August 16, 1954, 68A Stat. 775, as amended, 777, as amended, 778, as amended (26 U.S.C. 6302, 6311, 6313); sec. 201, Pub. L. 85-859, 72 Stat. 1335, as amended (26 U.S.C. 5061))

§ 25.164 Semimonthly return.

(a) *Requirement for filing.* Each brewer shall pay the tax on beer (unless prepaid) by semimonthly return on Form 5000.24. The brewer shall file Form 5000.24 as a semimonthly return regardless of whether tax has been prepaid as provided in § 25.175 during the return period. The brewer shall file a return on Form 5000.24 for each return period even though no beer was removed for consumption or sale.

(b) *Payment of tax.* The brewer shall include for payment with the return the full amount of tax required to be determined (and which has not been prepaid) on all beer removed for consumption or sale during the period covered by the return.

(c) *Return periods.* Return periods run from the brewer's business day beginning on the first day of each month through the brewer's business day beginning on the 15th day of that month, and from the brewer's business day beginning on the last day of the month.

(d) *Time for filing returns and paying tax.* The brewer shall file the semimonthly tax return, Form 5000.24, for each return period, and remittance as required by this section, not later than the last full calendar day of the return period next succeeding that period. When the due date for filing a return falls on a Saturday, Sunday or legal holiday, the time for filing is extended to the first succeeding day which is not a Saturday, Sunday or legal holiday.

(e) *Timely filing.* (1) When the brewer sends the semimonthly return by U.S. mail, with remittance as required by this section to the office of the district director or to the director of the service center, or without remittance as required by § 25.165 to the district director, director of the service center, or regional director (compliance) in accordance with the instructions on the form, the date of the official postmark of the United States Postal Service stamped on the cover in which the return and remittance were mailed is considered the date of delivery of the return and the date of delivery of the remittance, if enclosed with the return. When the postmark on the cover is illegible, the burden is on the brewer to prove when the postmark was made.

(2) When the brewer sends the semimonthly return with or without remittance by registered mail or by certified mail, the date of registry or the date of the postmark on the sender's receipt of certified mail be treated as the date of delivery of the semimonthly return and of the remittance, if enclosed with the return.

(Aug. 16, 1954, ch. 736, 68A Stat. 775, as amended (26 U.S.C. 6302); sec. 201, Pub. L. 85-859, 72 Stat. 1335, as amended (26 U.S.C. 5061))

§ 25.165 Payment of tax by electronic fund transfer.

(a) *Eligible brewers.* (1) Each taxpayer who was liable, during a calendar year, for a gross amount equal to or exceeding five million dollars in beer taxes combining tax liabilities incurred under this part and Parts 250 and 251 of this chapter, shall use a commercial bank in making payment by electronic fund transfer (EFT) of beer taxes during the succeeding calendar year. Payment of beer taxes by cash, check, or money order, as described in § 25.163, is not authorized for a taxpayer who is required by this section to make remittances by EFT. For purposes of this section, the dollar amount of tax liability is defined as the gross tax liability on all taxable removals, determined in accordance with § 25.159, and importations (including beer brought into the United States from Puerto Rico or the Virgin Islands) during the calendar year, without regard to any drawbacks, credits, or refunds, for all premises from which such activities are conducted by the taxpayer. Overpayments are not taken into account in summarizing the gross tax liability.

(2) For the purposes of this section, a taxpayer includes a controlled group of corporations, as defined in 26 U.S.C. 1563, and implementing regulations in 26 CFR 1.1563-1 through 1.1563-4. These criteria are not the same criteria applied to a controlled group of brewers under § 25.152 for the purpose of determining eligibility for a reduced rate of tax.

(3) A taxpayer who is required by this section to make remittances by EFT shall make a separate EFT remittance and file a separate return, Form 5000.24, for each brewery from which beer is removed upon determination of tax.

(b) *Requirements.* (1) On or before January 10 of each calendar year, except for a taxpayer already remitting the tax by EFT, each taxpayer who was liable for a gross amount equal to or exceeding five million dollars in beer taxes combining tax liabilities incurred under this part and Parts 250 and 251 of this chapter, during the previous calendar year, shall notify, in writing the regional director (compliance), for each region in which taxes are paid. The notice shall be an agreement to make remittances by EFT.

(2) For each return filed in accordance with this part, the taxpayer shall direct the taxpayer's bank to make an electronic fund transfer in the amount of the taxpayment to the Treasury Account as provided in paragraph (e) of this section. The request shall be made to the bank early enough for the transfer to be made to the Treasury Account by no later than the close of business on the last day for filing the return, pre-

scribed in §§ 25.164 or 25.175. The request shall take into account any time limit established by the bank.

(3) If a taxpayer was liable for less than five million dollars in beer taxes during the preceding calendar year, combining tax liabilities incurred under this part and Parts 250 and 251 of this chapter, the taxpayer may choose either to continue remitting the tax as provided in this section or to remit the tax with the return as prescribed by § 25.164. Upon filing the first return on which the taxpayer chooses to discontinue remitting the tax by EFT and to begin remitting the tax with the tax return, the taxpayer shall notify the regional director (compliance) by attaching a written notification to Form 5000.24, stating that no taxes are due by EFT because the tax liability during the preceding calendar year was less than five million dollars, and that the remittance will be filed with the tax return.

(2) *Remittance.* (1) Each taxpayer shall show on the return, Form 5000.24, information about remitting the tax for that return by EFT and shall file the return with the director of the service center, district director, or regional director (compliance), in accordance with the instructions on Form 5000.24.

(c) Remittances shall be considered as made when a taxpayer unconditionally directs the bank to make an electronic fund transfer immediately in the amount of the taxpayment to the Treasury Account, in accordance with the procedures established by the bank.

(3) When the taxpayer directs the bank to effect an electronic fund transfer message as required by paragraph (b)(2) of this section, any transfer data record furnished to the taxpayer, through normal banking procedures, will serve as the record of payment, and will be retained as part of required records.

(d) *Failure to request an electronic fund transfer message.* The taxpayer is subject to a penalty imposed by 26 U.S.C. 5684, 6651, or 6656, as applicable, for failure to make a taxpayment by EFT on or before the close of business on the prescribed last day for filing.

(e) *Procedure.* Upon the notification required under paragraph (b)(1) of this section, the regional director (compliance) will issue to the taxpayer an ATF Procedure entitled "Payment of Tax by Electronic Fund Transfer." This publication outlines the procedure a taxpayer is to follow when preparing returns and EFT remittances in accordance with this part. The U.S. Customs Service will provide the taxpayer with instructions for preparing EFT remittances for payments to be made to the U.S. Customs Service.

(Act of August 16, 1954, 68A Stat. 775, as amended (26 U.S.C. 6302); Sec. 201, Pub. L. 65-859, 72 Stat. 1335, as amended (26 U.S.C. 5061))

§ 25.166 Payment of reduced rate of tax.

(a) *By return, Form 5000.24.* A brewer who is eligible to pay the reduced rate of tax on beer may, upon filing the notice required by § 25.167, pay the reduced rate of tax on beer by semimonthly return as provided in § 25.164 or by prepayment return as provided in § 25.175. Payment of reduced rate of tax on beer by return, Form 5000.24, may commence with any tax return filed during a calendar year and will continue until the brewer has taxpaid 60,00 barrels of beer at the lower rate of tax, or taxpaid the number of barrels of beer apportioned under § 25.167(b)(3) for that calendar year.

(b) *By claim for refund of tax.* A brewer, eligible to pay the reduced rate of tax on beer during a calendar year, but who has not paid the reduced rate of tax by return during that year, may file a claim, Form 843, for refund of tax excessively paid on beer during that year. Claims for refund of tax will be filed as provided in § 25.285.

(Sec. 201, Pub. L. 85-859, 72 Stat. 1333, as amended (26 U.S.C. 5051))

§ 25.167 Notice of brewer to pay reduced rate of tax.

(a) *Requirement to file notice.* Every brewer who desires to pay the reduced rate of tax on beer authorized by 26 U.S.C. 5051(a)(2) by tax return, Form 5000.24, shall prepare a notice containing the information required by paragraph (b) of this section. The brewer shall file this notice with the regional director (compliance) for the first return period (or prepayment return) during which the brewer pays tax on beer at the reduced rate. The brewer shall file the notice each year in which payment of the reduced rate of tax on beer is made by return.

(b) *Information to be furnished.* Each notice described in paragraph (a) of this section will contain the following information:

(1) A statement that the brewer will not or is not likely to produce more than 2,000,000 barrels of beer in the calendar year for which the notice is filed.

(2) A statement that the brewer is not a member of a controlled group of brewers, or if the brewer is a member of a controlled group of brewers, a statement that the controlled group will not or is not likely to produce more than 2,000,000 barrels of beer in the calendar year for which the notice is filed.

(3) If the brewer operates more than one brewery, a statement of the locations of all the breweries and a statement of how the 60,000 barrel limitation for the reduced rate of tax will be apportioned among the breweries. If the brewer is a member of a controlled group of brewers, a statement of the names and locations of all other brewers in the group and a statement of how the 60,000 barrels limitation will be apportioned among the brewers in the group.

(c) *Perjury statement.* Each notice described in this section will be executed by the brewer under penalties of perjury as defined in § 25.11.

(Act of Aug. 16, 1954, 68A Stat. 749, as amended (26 U.S.C. 6065); sec. 201, Pub. L. 85-859, 72 Stat. 1390, as amended, 1395, as amended (26 U.S.C. 5415, 5555))

§ 25.168 Employer identification number.

The employer identification number (defined at 26 CFR 301.7701-12) of the taxpayer who has been assigned the number will be shown on each return on Form 5000.24, filed under this part. Failure of the taxpayer to include the employer identification number on Form 5000.24 may result in imposition of the penalty specified in 26 CFR 301.6676-1. A brewer shall apply for an employer identification number on IRS Form SS-4 as provided in §§ 25.122 and 25.123.

(Pub. L. 87-397, 75 Stat. 828, as amended (26 U.S.C. 6109, 6676))

Prepayment of Tax

§ 25.173 Brewer in default.

(a) When a remittance in payment of taxes on beer is not paid upon presentment of check or money order tendered, or when the brewer is otherwise in default in payment of tax under § 25.164, beer may not be removed for consumption or sale or taken from the brewery for consumption or sale until the tax has been prepaid as provided in § 25.175. The brewer shall continue to prepay while in default and thereafter until the regional director (compliance) finds the revenue will not be jeopardized by deferred payment of tax as provided in § 25.164.

(b) Any remittance made while the brewer is required to prepay under this section will be in cash or in the form of a certified, cashier's or treasurer's check drawn on any bank or trust company incorporated under the laws of the United States, or under the law of any State, Territory, or possession of the United States, or in the form of a money order as provided in 26 CFR 301.6311-1 (payment by check or money order), or will be made in the form of an electronic fund transfer as provided by §§ 25.164 and 25.165.

§ 25.174 Bond not sufficient.

When the penal sum of the brewer's bond is in less than the maximum amount, the brewer shall prepay the tax on any withdrawal which would cause the outstanding liability for tax to exceed the limits of coverage of the bond. Prepayments will be made in accordance with § 25.175.

§ 25.175 Prepayment of tax.

(a) *General.* When a brewer is required to prepay tax under § 25.173, or if the penal sum of the bond, Form 5130.22, is insufficient for deferral of payment of tax on beer to be removed for consumption or sale, or if a brewer is not entitled to defer the tax under the provisions of this subpart, the brewer shall prepay the tax before any beer is removed for consumption or sale, or taken out of the brewery for removal for consumption or sale.

(b) *Method of prepayment.* (1) Prepayment will be made by forwarding or delivering to the district director, or the director of the service center a tax return, Form 5000.24, with remittance, covering the tax on beer.

(2) If a brewer is required by § 25.165 to make payment of tax by electronic fund transfer, the brewer shall prepay the tax before any beer can be removed for consumption or sale by completing the return and by delivering or forwarding it to the district director, director of the service center or regional director (compliance), in accordance with the instructions on the form. At the same time, the brewer shall direct his or her bank to make remittance by EFT.

(3) For the purpose of complying with this section, the term "forwarding" means depositing in the U.S. mail, properly addressed to the district director or the director of the service center in accordance with the instructions on the form.

(Act of Aug. 16, 1954, 68A Stat. 777, as amended (26 U.S.C. 6311); sec. 201, Pub. L. 85-859, 72 Stat. 1335, as amended (26 U.S.C. 5061))

Failure to Pay Tax

§ 25.177 Evasion of or failure to pay tax; failure to file a tax return.

Sections 5671, 5673, 5684, 6651, and 6656 of Title 26 United States Code provide penalties for evasion or failure to pay tax on beer or for failure to file a tax return.

(Act of Aug. 16, 1954, 68A Stat. 821, as amended, 826, as amended (26 U.S.C. 6651, 6656); sec. 201, Pub. L. 85-859, 72 Stat. 1408, 1410, as amended (26 U.S.C. 5671, 5673, 5684))

Subpart L—Removals Without Payment of Tax

Transfer to Another Brewery of Same Ownership

§ 25.181 Eligibility.

A brewer may remove beer without payment of tax for transfer to any other brewery of the same ownership. These removals include a removal from a brewery owned by one corporation to a brewery owned by another corporation if (a) one corporation owns the controlling interest in the other corporation, or (b) the controlling interest in each corporation is owned by the same person. Beer removed under this section may, while in transit, be reconsigned to another brewery of the same ownership or be returned to the shipping brewery.

(Sec. 201, Pub. L. 85-859, 72 Stat. 1389, as amended (26 U.S.C. 5414))

§ 25.182 Kinds of containers.

A brewer may transfer beer without payment of tax from one brewery to another brewery belonging to the same brewer (a) in the brewer's packages or (b) in bulk containers, subject to limitations and conditions as may be imposed by the regional director (compliance). The brewer shall mark, brand or label containers as provided by Subpart J of this part.

(Sec. 201, Pub. L. 85-859, 72 Stat. 1389, as amended (26 U.S.C. 5414))

§ 25.183 Determination of quantity transferred.

The shipping brewer shall determine the quantity of beer shipped at the time of removal from the consignor brewery, and the receiving brewer shall determine the quantity of beer received at the time of receipt at the consignee brewery. The brewer shall equip the consignor and consignee breweries with suitable measuring devices to allow accurate determination of the quantities of beer to be shipped and received in bulk conveyances.

(Sec. 201, Pub. L. 85-859, 72 Stat. 1389, as amended (26 U.S.C. 5414))

§ 25.184 Losses in transit.

(a) *Liability for losses.* The brewer is liable under the bond of the brewery to which beer is transferred for the tax on beer lost in transit. If the brewer reconsigns beer while in transit or returns beer to the shipping brewery, the brewer is liable under the bond of the brewery to which the beer is reconsigned or returned for the tax on beer lost in transit.

(b) *Losses allowable without claim.* If loss of beer being transferred does not exceed two percent of the quantity shipped, the brewer is not required to file a report of loss or a claim for allowance of the loss if there are no circumstances indicating that the beer, or any portion of the beer lost, was stolen or otherwise diverted to an unlawful purpose.

(c) *Losses requiring claim.* If loss of beer during transit exceeds two percent of the quantity shipped, the brewer shall submit a claim under penalties of perjury for remission of the tax on the entire loss. The brewer shall submit the claim to the regional director (compliance) of the region in which the brewery to which the beer was shipped, reconsigned or returned, is located. The brewer shall prepare and submit the claim as provided in § 25.286.

(d) *Losses requiring immediate report.* The brewer shall report to the regional director (compliance) a loss by fire, theft, casualty or any other unusual loss as soon as it becomes known.

(Sec. 201, Pub. L. 85-859, 72 Stat. 1335, as amended 1389 (26 U.S.C. 5056, 5414))

§ 25.185 Mingling.

Beer transferred without payment of tax from one brewery to another brewery belonging to the same brewer may be mingled with beer of the receiving brewery. The brewer may handle the beer transferred in accordance with the requirements of this part relating to beer produced in the receiving brewery.

(Sec. 201, Pub. L. 85-859, 72 Stat. 1389, as amended (26 U.S.C. 5414))

§ 25.186 Record of beer transferred.

(a) *Preparation of invoice.* When beer is transferred between breweries without payment of tax, the shipping brewer shall prepare a serially numbered invoice or commercial record, in duplicate, covering the transfer. The invoice will be marked "transfer without payment of tax" and will contain the following information:

(1) Name and address of shipping brewer;

(2) Date of shipment;

(3) Name and address of receiving brewer;

(4) For cases, the number and size of cases and the total barrels;

(5) For kegs, the number and size of kegs and the total barrels;

(6) For shipments in bulk containers, the type of container, identity of the container and the total barrels.

(b) *Reconsignment of beer.* When beer is reconsigned in transit to another brewery of the same ownership, the shipping brewer shall (1) prepare a new invoice showing reconsignment to another brewery and shall void all copies of the original invoice, or (2) shall mark all copies of the original invoice with the words "Reconsigned to _____." followed by the name and address of the brewery to which the beer is reconsigned.

(c) *Disposition of invoice.* On shipment of the beer, the shipping brewer shall send the original copy of the invoice to the receiving brewer, and shall retain the other copy for the brewery records. On receipt of the beer, the receiving brewer (including a brewer to whom beer was returned or reconsigned in transit) shall note on the invoice any discrepancies in the beer received, and retain the invoice in the brewery records.

(d) *Preparation of records and report.* The shipping brewer shall use the invoice showing beer removed to another brewery without payment of tax in preparing daily records under § 25.292 and in preparing the monthly report, Form 5130.90. The receiving brewer (including a brewer to whom beer was returned or reconsigned in transit) shall use the invoice showing beer received from another brewery without payment of tax in preparing daily records under § 25.292 and in preparing the monthly report, Form 5130.9.

(Sec. 201, Pub. L. 85-859, 72 Stat. 1389, as amended (26 U.S.C. 5414))

Removal of Beer Unfit for Beverage Use

§ 25.191 General.

A brewer may remove sour or damaged beer, or beer which the brewer has deliberately rendered unfit for beverage use, from the brewery without payment of tax for use in manufacturing. Unfit beer may be removed under this section for use as distilling material at alcohol fuel plants qualified under Subpart Y of part 19 of this chapter.

(Sec. 201, Pub. L. 85-859, 72 Stat. 1334, as amended (26 U.S.C. 5053))

§ 25.192 Removal of sour or damaged beer.

(a) *Containers.* The brewer shall remove sour or damaged (1) in casks or other packages, containing not less than one barrel each and unlike those ordinarily used for packaging beer, or (2) in tanks, tank cars, tank trucks, tank ships, barges, or deep tanks of a vessel. The brewer shall mark the nature of the contents on each container.

(b) *Beer meter.* The brewer shall remove sour or damaged beer without passing it through the meter (if any) or racking machine.

(c) *Records and reports.* The brewer shall record the removal of sour or damaged beer in daily records under § 25.292 and on the monthly report, Form 5130.9.

(Sec. 201, Pub. L. 85-859, 72 Stat. 1334, as amended (26 U.S.C. 5033))

Removals for Analysis, Research, Development or Testing

§ 25.195 Removals for analysis.

A brewer may remove beer, without payment of tax, to a laboratory for analysis to determine the character or quality of the product. Beer may be removed for analysis in packages or in bulk containers. The brewer shall record beer removed for analysis in daily records under § 25.292 and on the monthly report, Form 5130.9.

(Sec. 201, Pub. L. 85-859, 72 Stat. 1334, as amended (26 U.S.C. 5053))

§ 25.196 Removals for research, development or testing.

(a) A brewer may remove beer, without payment of tax, for use in research, development, or testing (other than consumer testing or other market analysis) of processes, systems, materials, or equipment relating to beer or brewery operations. Beer may be removed for research, development or testing in packages or in bulk containers.

(b) The brewer shall mark each barrel, keg, case, or shipping container with the name and address of the brewer and of the consignee, the identity of the product, and the quantity of the product. If necessary to protect the revenue, the regional director (compliance) may require a brewer to mark each container with the words "Not for Consumption or Sale." If beer is removed in a bulk conveyance, the brewer shall place the marks on the route board of the conveyance.

(c) The brewer shall record beer removed for research, development, or testing in daily records under § 25.292 and on the monthly report, Form 5130.9.

(Sec. 201, Pub. L. 85-859, 72 Stat. 1334, as amended (26 U.S.C. 5053))

Removal of Beer to a Contiguous Distilled Spirits Plant

§ 25.201 Removal by pipeline.

A brewer may remove beer from the brewery, without payment of tax, by pipeline to the bonded premises of a distilled spirits plant which is authorized to produce distilled spirits and which is located contiguous to the brewery.

(Sec. 201, Pub. L. 85-859, 72 Stat. 1365, as amended (26 U.S.C. 5222, 5412)).

Exportation

§ 25.203 Exportation without payment of tax.

A brewer may remove beer without payment of tax (a) for exportation, (b) for use as supplies on vessels and aircraft, or (c) for transfer to and deposit in foreign-trade zones for exportation or for storage pending exportation, in accordance with Part 252 of this chapter. Beer may be removed from a brewery in bottles, kegs, or in bulk containers.

(Sec. 309, Tariff Act of 1930, 46 Stat. 690, as amended (19 U.S.C. 1309); sec. 3, Act of June 18, 1934, 48 Stat. 999, as amended (19 U.S.C. 81c); sec. 201, Pub. L. 85-859, 72 Stat. 1334, as amended (26 U.S.C. 5053))

Beer For Personal or Family Use

§ 25.205 Production.

(a) Any adult may produce beer, without payment of tax, for personal or family use and not for sale. An adult is any individual who is 18 years of age or older. If the locality in which the household is located requires a greater minimum age for the sale of beer to individuals, the adult shall be that age before commencing the production of beer. This exemption does not authorize the production of beer for use contrary to State or local law.

(b) The production of beer per household, without payment of tax, for personal or family use may not exceed:

(1) 200 gallons per calendar year if there are two or more adults residing in the household, or

(2) 100 gallons per calendar year if there is only one adult residing in the household.

(c) Partnerships except as provided in § 25.207, corporations or associations may not produce beer, without payment of tax, for personal or family use.

(Sec. 201, Pub. L. 85-859, 72 Stat. 1334, as amended (26 U.S.C. 5053))

§ 25.206 Removal of beer.

Beer made under § 25.205 may be removed from the premises where made for personal or family use including use at organized affairs, exhibitions or competitions such as homemaker's contests, tastings or judging. Beer removed under this section may not be sold or offered for sale.

(Sec. 201, Pub. L. 85-859, 72 Stat. 1334, as amended (26 U.S.C. 5053))

§ 25.207 Removal from brewery for personal or family use.

Any adult, as defined in § 25.205, who operates a brewery under this part as an individual owner or in partnership with others, may remove beer from the brewery without payment of tax for personal or family use. The amount of beer removed for each household, without payment of tax, per calendar year may not exceed 100 gallons if there is one adult residing in the household or 200 gallons if there are two or more adults residing in the household. Beer removed in excess of the above limitations will be reported as a taxable removal.

(Sec. 201, Pub. L. 85-859, 72 Stat. 1334, as amended (26 U.S.C. 5053))

Subpart M—Beer Returned to Brewery

§ 25.211 Beer returned to brewery.

(a) *General.* Beer, produced in the United States, on which the brewer has paid or determined the tax may be returned to any brewery of the brewer. Upon return of the beer to the brewery, the brewer shall determine the actual quantity of beer received, expressed in barrels. For cases or bottles, the label may be used to determine the quantity. When kegs or cases containing less than the original contents are received, the brewer shall determine the actual quantity of beer by weight or by other accurate means. The brewer shall determine the balling and alcohol content of returned keg beer unless the keg is equipped with tamper-proof fittings. The quantity of beer returned may be established by weighing individual packages and subtracting package weight, or by weighing accumulated beer and subtracting tare weight of dumpsters, pallets, packages and the like.

(b) *Disposition of returned beer.* The brewer may dispose of beer returned under this subpart in any manner prescribed for beer which has never left the brewery. If returned beer is again removed for consumption or sale, tax will be determined and paid without respect to the tax which was determined or paid at the time of prior removal of the beer.

(c) *Records.* For beer returned to the brewery under this subpart, the brewer's daily records under § 25.292 will show:

(1) Date;

(2) Quantity of beer returned;

(3) If the title to the beer has passed, the name and address of the person returning the beer; and

(4) Name and address of the brewery from which the beer was re-

moved, if different from the brewery to which returned.

(d) *Supporting records.* The records of returned beer will be supported by invoices, credit memoranda or other commercial papers, and will differentiate between beer returned to the brewery from which removed and beer returned to a brewery different from the one from which removed.

(Sec. 201, Pub. L. 85-859, 72 Stat. 1334, as amended, 1335, as amended, 1390, as amended (26 U.S.C. 5054, 5056, 5415))

§ 25.212 Beer returned to brewery from which removed.

If beer on which the tax has been determined or paid is returned to the brewery from which removed, the brewer shall take the quantity of beer as an offset or deduction against the quantity of beer removed for consumption or sale from the brewery on that business day, as provided in § 25.159.

(Sec. 201, Pub. L. 85-859, 72 Stat. 1335, as amended, 1390, as amended (26 U.S.C. 5056, 5415))

§ 25.213 Beer returned to brewery other than that from which removed.

(a) *Refund or adjustment of tax.* If beer on which the tax has been determined or paid is returned to a brewery of the brewer other than the one from which removed, the brewer may make a claim for refund or relief of tax or may make an adjustment to the beer tax return, for the tax on the beer returned to the brewery. The brewer may not take an offset for beer returned to the brewery other than the one from which removed. Procedures for filing claims for refund or relief of tax or for making adjustments to the beer tax return are contained in Subpart T of this part.

(b) *Notice.* A brewer need not file notice of intention to return beer to a brewery other than the one from which removed unless required by the regional director (compliance). When a notice is required, the brewer shall serially number each notice and execute it under penalties of perjury as defined in § 25.11. The brewer shall file it with the regional director (compliance) through the area supervisor of the area in which the brewery is located where the beer is to be returned. The notice will contain the following information:

(1) The number and sizes of kegs and the actual quantity of beer, in barrels; or the number of cases and the number and sizes of bottles within the cases and the actual quantity of beer, in barrels;

(2) The name and address of the brewery from which the beer was removed;

(3) A statement that the tax on the beer has been fully paid or determined and the rate at which the tax on the beer was paid or determined; and

(4) If the title to the beer has passed, the name and address of the person returning the beer.

(c) *Return of beer.* If the brewer is required to file a notice of intention to return beer to the brewery, the brewer may bring the beer onto the brewery premises prior to filing the notice. The brewer shall segregate the returned beer from all other beer at the brewery and clearly identify it as returned beer. The returned beer will be retained intact for inspection by an ATF officer until the notice has been filed and disposition authorized.

(Sec. 201, Pub. L. 85-859, 72 Stat. 1335, as amended (26 U.S.C. 5056))

Subpart N — Voluntary Destruction

§ 25.221 Voluntary destruction of beer.

(a) *On brewery premises.* A brewer may destroy, at the brewery, beer on which the tax has not been determined or paid.

(b) *Destruction without return to brewery.* A brewer may destroy beer on which the tax has been paid or determined at a location other than any of the breweries operated by the brewer, upon compliance with this subpart.

(Sec. 201, Pub. L. 85-859, 72 Stat. 1335, as amended (26 U.S.C. 5056))

§ 25.222 Notice of brewer.

(a) *Beer to be destroyed.* When a brewer possesses beer which has been taxpaid or tax determined and which the brewer wishes to destroy at a location other than at any of the brewer's breweries, the brewer shall give written notice of intention to destroy the beer. The brewer shall submit this notice to the regional director (compliance) through the area supervisor of the area in which the beer is to be destroyed.

(b) *Execution of notice.* The brewer shall serially number each notice and execute each notice under penalties of perjury as defined in § 25.11. The brewer shall specify the date on which the beer is to be destroyed; this date may not be less than 12 days from the date the notice is mailed or delivered to the area supervisor.

(c) *Information to be furnished.* The notice will contain the following information:

(1) The number and sizes of kegs and the actual quantity of beer, in barrels; or the number of cases and the number and sizes of bottles within the cases, and the actual quantity of beer in barrels. When kegs containing less than the actual contents are to be destroyed, the brewer shall determine the actual content of beer by weight or by other accurate means.

(2) The date on which the beer was received for destruction.

(3) A statement that the tax on the beer has been fully paid or determined and the rate at which the tax on the beer was paid or determined.

(4) If the title of the beer has passed, the name and address of the person returning the beer.

(5) The location at which the brewer desires to destroy the beer and the reason for not returning the beer to the brewery.

(Sec. 201, Pub. L. 85-859, 72 Stat. 1335, as amended (26 U.S.C. 5056))

§ 25.223 Destruction of beer off brewery premises.

(a) *Destruction without supervision.* A brewer may destroy beer without supervision if the regional director (compliance) does not advise the brewer before the date specified in the notice that destruction of the beer is to be supervised.

(b) *Destruction with supervision.* The regional director (compliance) may require that an ATF officer verify the information in the notice of destruction or witness the destruction of the beer. The regional director (compliance) may also require a delay in the destruction of the beer or, if the place of destruction is not readily accessible to an ATF officer, may require that the beer be moved to a more convenient location. In this case, the brewer may not destroy the beer except under the conditions imposed by the regional director (compliance).

(Sec. 201, Pub. L. 85-859, 72 Stat. 1335, as amended (26 U.S.C. 5056))

§ 25.224. Refund or adjustment of tax.

(a) *Claim for refund or relief of tax.* The tax paid by a brewer on beer produced in the United States and destroyed in accordance with this subpart may be refunded to the brewer. If the tax has not been paid, the brewer may be relieved of liability for the tax. Claims for refund or relief of tax will be filed as provided in Subpart T of this part.

(b) *Adjustments to the excise tax return.* A brewer may make an adjustment (without interest) to the excise tax return, Form 5000.24, covering the tax paid on beer produced in the United States and destroyed in accordance with this subpart. Procedures for making adjustments to tax returns are contained in Subpart T of this part.

(Sec. 201, Pub. L. 85-859, 72 Stat. 1335, as amended (26 U.S.C. 5056))

Subpart O—Beer Purchased From Another Brewer

§ 25.231 Finished beer.

(a) A brewer may obtain beer in barrels and kegs, finished and ready for sale from another brewer. The purchasing brewer may furnish the producing brewer barrels and kegs marked with the purchasing brewer's name and location. The producing brewer shall pay the tax as provided in Subpart K of this part.

(b) A brewer may not purchase taxpaid or tax determined beer from another brewer in bottles or cans which bear the name and address of the purchasing brewer.

(Sec. 201, Pub. L. 85-859, 72 Stat. 1389, as amended (26 U.S.C. 5413))

§ 25.232 Basic permit.

A brewer who engages in the business of purchasing beer for resale is required to possess a wholesaler's or importer's basic permit under the provisions of section 3(c) of the Federal Alcohol Administration Act and Part 1 of this chapter.

Subpart P—Cereal Beverage

§ 25.241 Production.

Brewers may produce cereal beverage and remove it without payment of tax from the brewery. The method of production shall insure that the alcohol content of the cereal beverage will not increase while in the original container after removal from the brewery. The brewer shall keep cereal beverage separate from beer, and shall measure the quantity of cereal beverage transferred for packaging in accordance with § 25.41.

(Sec. 201, Pub. L. 85-859, 72 Stat. 1389, as amended (26 U.S.C. 5411))

§ 25.242 Markings.

(a) *Designation.* When bottled or packaged, cereal beverage may be designated "Cereal Beverage," "Malt Beverage," "Near Beer," or other distinctive name. If designated "Near Beer," those words will be printed identically in the same size or style of type, in the same color of ink, and on the same background.

(b) *Barrels and kegs.* A brewer may remove cereal beverage in barrels and kegs if the sides are durably painted at each end with a white stripe not less than 4 inches in width and the heads are painted in a solid color, with conspicuous lettering in a contrasting color reading "Nontaxable under section 5051 I.R.C." The brewer shall also legibly mark the brewer's name or trade name and the address on the container.

(c) *Bottles.* Bottle labels shall show the name or trade name and address of the brewer, the distinctive name of the beverage, if any, and the legend "Nontaxable under section 5051 I.R.C." Other information which is not inconsistent with the requirements of this section may be shown on bottle labels.

(d) *Cases.* The brewer shall mark cases or shipping containers to show the nature of the product and the name or trade name and address of the brewer.

(Sec. 201, Pub. L. 85-859, 72 Stat. 1389, as amended (26 U.S.C. 5411))

Subpart Q—Removal of Brewer's Yeast and Other Articles

§ 25.251 Authorized removals.

(a) *Brewer's yeast.* A brewer may remove brewer's yeast, in liquid or solid form containing not less than 10 percent solids (as determined by the methods of analysis of the American Society of Brewing Chemists), from the brewery in barrels, tank trucks, in other suitable containers, or by pipeline.

(b) *Containers.* Containers will bear a label giving the name and location of the brewery and including the words "Brewer's Yeast."

(c) *Pipeline.* If brewer's yeast is removed by pipeline, the pipeline will be described in the Brewer's Notice, Form 5130.10. The premises where the brewer's yeast is received is subject to inspection by an ATF officer during ordinary business hours.

(d) *Other articles.* A brewer may remove malt, malt syrup, wort, and other articles from the brewery.

(e) *Methods of Analysis of the American Society of Brewing Chemists, Seventh Edition (1976).* In reference to paragraph (a) of this section, this incorporation by reference was approved by the Director of the Federal Register on March 23, 1981, and is available for inspection at the Office of the Federal Register, Room 8401, 1100 L Street, NW., Washington, DC. This publication is available from the American Society of Brewing Chemists, 40 Pilot Knob Road, St. Paul, Minnesota 55121.

(Sec. 201, Pub. L. 85-859, 72 Stat. 1389, as amended (26 U.S.C. 5411))

§ 25.252 Records.

(a) *Production.* The brewer shall keep records of the production of malt syrup, wort, and other articles which are removed from the brewery. The record shall include the quantities and kinds of materials used, and in the case of wort and concentrated wort, the balling.

(b) *Removals.* The brewer shall keep records of removals of brewer's yeast, malt and other articles from the brewery. The record shall include the quantity and date of removal of each lot, and the name and address of the consignee. These records may consist of invoices or shipping documents.

(c) *Inspection.* All records under this section shall be available for inspection at the brewery by an ATF officer during normal business hours.

(Sec. 201, Pub. L. 85-859, 72 Sta. 1390, as amended (26 U.S.C. 5415))

Subpart R—Beer Concentrate

§ 25.261 General.

(a) *Authorized processes.* A brewer may, in accordance with this subpart—

(1) Produce concentrate from beer,

(2) Reconstitute beer from concentrate,

(3) Transfer concentrate from one brewery to another brewery of the same ownership, and

(4) Remove concentrate without payment of tax for exportation, or for transfer to and deposit in a foreign-trade zone for exportation or for storage pending exportation in accordance with Part 252 of this chapter.

(b) *Brewery treatment of concentrate.* Beer reconstituted from concentrate in accordance with this subpart shall (except with respect to the additional labeling of reconstituted beer under § 25.263) be treated the same as beer which has not been concentrated and reconstituted.

(Sec. 201, Pub. L. 85-859, 72 Stat. 1388, as amended (26 U.S.C. 5401))

§ 25.262 Restrictions and conditions on processes of concentration and reconstitution.

(a) *Conditions on concentration.* A brewer may not employ any process of concentration which separates alcohol spirits from any fermented substance.

(b) *Conditions on reconstitution.*

(1) The process of reconstitution of beer will consist of the addition to the concentrate of carbon dioxide and water only.

(2) A brewer may not employ any process of concentration or reconstitution unless the beer upon reconstitution will, without the addition of any substance other than carbon dioxide and water, possess the taste, aroma, color, and other characteristics of beer which has not been concentrated.

(3) The process of reconstitution shall provide for the addition of sufficient water to restore the concentrate to a volume not less than, and an alcohol content not greater than, that of the beer used to produce the concentrate.

(Sec. 201, Pub. L. 85-859, 72 Stat. 1315, as amended, 1388, as amended (26 U.S.C. 5002, 5401))

§ 25.263 Production of Concentrate and reconstitution of beer.

(a) *Operations at brewery.* A brewer may concentrate beer or reconstitute beer only at a brewery.

(b) *Marking of containers.* Containers of concentrate transferred to other breweries of the same ownership, and containers of concentrate removed for export shall be marked, branded and labeled in the same manner as prescribed for containers of beer in Subpart J of this part. All containers shall be identified as containers of beer concentrate.

(c) *Mingling with beer.* A brewer may not mingle concentrate with unconcentrated beer. A brewer may mingle reconstituted beer with other beer at the brewery.

(d) *Additional labeling.* Barrels, kegs, and bottles containing beer produced from concentrate will show by label or otherwise the statement "PRODUCED FROM . . . CONCENTRATE," blank to be filled in with the appropriate class designation of the beer (beer, lager, ale, stout, etc.) from which the concentrate was made. The statement will be conspicuous and readily legible and, in the case of bottled beer, will appear in direct conjunction with, and as a part of, the class designation. All parts of the class designation will appear in lettering of substantially the same size and kind.

(3) *Records and reports.* Brewers producing concentrate and brewers reconstituting beer from concentrate shall keep the records and reports required by Subpart U of this part.

§ 25.264 Transfer between breweries.

(a) *Authorized transfers.* A brewer may remove from the brewery, without payment of tax, concentrate produced from beer for transfer to any other brewery of the same ownership (within the limits of ownership described in § 25.181).

(b) *Record of concentrate transferred.* When transferring concentrate between breweries, the shipping brewer shall prepare for each conveyance a serially numbered invoice or commercial record covering the transfer. The invoice will be clearly marked to indicate that concentrate produced from beer is being transferred. The invoice will contain the following information:

(1) Name and address of shipping brewer;

(2) Date of shipment;

(3) Name and address of receiving brewer;

(4) The number of containers transferred, the balling, percentage of alcohol by volume, and the total barrels of concentrate; and

(5) A description of the beer from which the concentrate was produced including the number of barrels, balling, and percentage of alcohol by volume.

(c) *Disposition of invoice.* On shipment of the concentrate, the shipping brewer shall send the original copy of the invoice to the receiving brewer and shall retain a copy for the brewery records. On receipt of the concentrate, the receiving brewer shall note on the invoice any discrepancies in the concentrate received and retain the invoice in the brewery records.

Subpart S — Pilot Brewing Plants

§ 25.271 General.

(a) *Establishment.* A person may establish and operate a pilot brewing plant off the brewery premises for research, analytical, experimental, or developmental purposes relating to beer or brewery operations. Pilot brewing plants will be established as provided in this subpart.

(b) *Authorized removals.* Beer may be removed from a pilot brewing plant only for analysis or organoleptic examination.

(c) *Transfers between brewery and pilot brewing plant.* Subject to Subpart L of this part, beer may be transferred to a pilot brewing plant from a brewery of the same ownership, and beer may be transferred without payment of tax from a pilot brewing plant to a brewery of the same ownership.

(d) *Other regulations applicable.* The provisions of Subparts A, B, F, I, K, and of §§ 25.63, 25.64 and 25.21 are applicable to pilot brewing plants established under this subpart. Also, the provisions of §§ 25.72-25.75, 25.77, 25.92 and 25.94-25.105 relating to bonds, and consents of surety, and of §§ 25.131-25.134 are applicable to bonds and consents of surety given, and to changes in the proprietorship, location, and premises of pilot brewing plants established under this subpart.

(Sec. 4, Pub. L. 91-673, 84 Stat. 2057, as amended (26 U.S.C. 5417))

§ 25.272 Application.

(a) *Form of application.* Any person desiring to establish a pilot brewing plant under the subpart shall file an application with the regional director (compliance). The application will be in writing and will include the following:

(1) Name and address of the applicant;

(2) Description of the premises and equipment to be used in the operations;

(3) Nature, purpose, and extent of the operations; and

(4) A statement that the applicant agrees to comply with all provisions of this part applicable to the operations to be conducted.

(b) *Additional information.* The regional director (compliance) may at any time before or after approval of an application, require the submission of additional information necessary for administration of this part or for protection of the revenue.

(c) *Authorization of operations.* The regional director (compliance) may authorize the operation of a pilot brewing plant if it is determined that the plant will be operated solely for one or more of the purposes specified in § 25.271, and that operations will not jeopardize the revenue.

(d) *Withdrawal of authorization.* The regional director (compliance) may withdraw authorization to operate a pilot brewing plant if in his or her judgment, the revenue would be jeopardized by the operations of the plant.

(e) *Commencement of operations.* A person may not begin operation of a pilot brewing plant until the regional director (compliance) has approved the application required by this section.

(Sec. 4, Pub. L. 91-673, 84 Stat. 2057, as amended (26 U.S.C. 5417))

§ 25.273 Action on application.

If the regional director (compliance) approves the application for a pilot brewing plant, he or she will note approval on the application and forward a copy to the applicant. The applicant shall file the copy of the approved application at the premises, available for inspection by an ATF officer.

§ 25.274 Bond.

(a) *Requirement.* Any person requesting authorization to establish a pilot brewing plant under this subpart shall execute and file a brewer's bond, Form 5130.22. A person may not begin operation of a pilot brewing plant until receiving notice from the regional director (compliance) of the approval of the bond. Operations may continue only as long as an approved bond is in effect.

(b) *Penal sum.* The penal sum of a bond covering the premises of a pilot brewing plant will be an amount equal to the potential tax liability of the maximum quantity of beer on hand, in transit to the plant, and unaccounted for at any one time, computed by multiplying the quantity of beer in barrels by the rate of tax in 26 U.S.C. 5051 The penal sum of the bond (or total penal sum if original and strengthening bonds are filed) may not exceed $50,000 or be less than $500.

(c) *Conditions of bonds.* The bond will be conditioned that the operator of the pilot brewing plant shall pay, or cause to be paid, to the United States according to the laws of the United States and the provisions of this part, the taxes, including penalties and interest for which the operator shall become liable, on all beer brewed, produced, or received on the premises.

(Sec. 4, Pub. L. 91-673, 84 Stat. 2057, as amended (26 U.S.C. 5417))

§ 25.275 Special tax.

The special tax imposed on a brewer by 26 U.S.C. 5091 shall be paid in accordance with Subpart I of this part.

§ 25.276 Operations and records.

(a) *Commencement of operations.* A person may commence operation of a pilot brewing plant upon receipt of the approved application and bond.

(b) *Reports.* The operator of a pilot brewing plant is not required to file monthly reports with the regional director (compliance).

(c) *Records.* The operator of a pilot brewing plant shall maintain records which, in the opinion of the regional director (compliance), are appropriate to the type of operation being conducted. These records will include information sufficient to account for the receipt, production, and disposition of all beer received or produced on the premises, and the receipt (and disposition, if removed) of all brewing materials. These records will be available for inspection by an ATF officer.

(Sec. 4, Pub. L. 91-673, 84 Stat. 2057, as amended (26 U.S.C. 5417))

§ 25.277 Discontinuance of operations.

When operations of a pilot brewing plant are to be discontinued, the operator shall notify the regional director (compliance) stating the purpose of the notice and giving the date of discontinuance. When operations have been completed and all beer at the premises has been disposed of and accounted for, the regional director (compliance) will note approval on the notice and return a copy to the operator.

Subpart T—Refund or Adjustment of Tax or Relief From Liability

§ 25.281 General.

(a) *Reasons for refund or adjustment of tax or relief from liability.* The tax paid by a brewer on beer produced in the United States may be refunded, or adjusted on the tax return (without interest) or, if the tax has not been paid, the brewer may be relieved of liability for the tax on:

(1) Beer returned to any brewery of the brewer subject to the conditions outlined in Subpart M of this part;

(2) Beer voluntarily destroyed by the brewer subject to the conditions outlined in Subpart N of this part;

(3) Beer lost by fire, theft, casualty, or act of God subject to the conditions outlined in § 25.282.

(b) *Refund of beer tax excessively paid.* A brewer may be refunded the tax excessively paid on beer subject to the conditions outlined in § 25.285.

(c) *Rate of tax.* Brewers who have filed the notice required by § 25.167 and who have paid the tax on beer at the reduced rate of tax shall make claims for refund or relief of tax, or adjustments on the tax return, based upon the lower rate of tax. However, a brewer may make adjustments or claims for refund or relief of tax based on the higher rate of tax if the brewer can establish to the satisfaction of the regional director (compliance) that the tax was paid or determined at the higher rate of tax.

(Sec. 201, Pub. L. 85-859, 72 Stat. 1335, as amended (26 U.S.C. 5056))

§ 25.282 Beer lost by fire, theft, casualty, or act of God.

(a) *General.* The tax paid by any brewer on beer produced in the United States may be adjusted (without interest) on the excise tax return, may be refunded or credited (without interest) or, if the tax has not been paid, the brewer may be relieved of liability for the tax if, before transfer of title to the beer to any other person, the beer is lost, whether by theft or otherwise, or is destroyed or otherwise rendered unmerchantable by fire, casualty, or act of God. The tax liability on excessive losses of beer from transfer between breweries of the same ownership may be remitted as provided in § 25.286.

(b) *Unmerchantable beer.* When beer is rendered unmerchantable by fire, casualty, or act of God, refund, credit or adjustment of tax, or relief from liability of tax will not be allowed unless the brewer proves to the satisfaction of the regional director (compliance) that the beer cannot be salvaged and returned to the market for consumption or sale.

(c) *Beer lost or destroyed.* When beer is lost or destroyed, whether by theft or otherwise, the regional director (compliance) may require the brewer to file a claim for relief from the tax and to submit proof as to the cause of the loss.

(d) *Beer lost by theft.* When it appears that beer was lost by theft, the tax shall be collected unless the brewer proves to the satisfaction of the regional director (compliance) that the theft occurred before removal from the brewery and occurred without connivance, collusion, fraud, or negligence on the part of the brewer, consignor, consignee, bailee, or carrier, or the employees or agents of any of them.

(e) *Notification of regional director (compliance).* (1) A brewer who sustains a loss of beer before transfer of title of the beer to another person and who desires to adjust the tax on the excise tax return or to file a claim for refund or for relief from liability of tax, shall, on learning of the loss of beer, immediately notify in writing the regional director (compliance) of the region in which the loss occurred of the nature, cause, and extent of the loss, and the place where the loss occurred. Statements of witnesses or other supporting documents shall be furnished if available.

(2) A brewer possessing unmerchantable beer and who desires to adjust the tax on the excise tax return or to file a claim for refund or for relief from liability shall notify in writing the regional director (compliance) of the region in which the beer is, of the circumstances by which the beer became unmerchantable, and shall state why the beer cannot be salvaged and returned to the market for consumption or sale.

(f) *Additional information.* The regional director (compliance) may require the brewer to submit additional evidence necessary to verify the tax adjustment or for use in connection with a claim.

(Sec. 201, Pub. L. 85-859, 72 Stat. 1335, as amended (26 U.S.C. 5056))

§ 25.283 Claims for refund of tax.

(a) *Beer returned to brewery or voluntarily destroyed.* Claims for refund of tax on beer returned to a brewery under the provisions of § 25.213 or voluntarily destroyed at a location other than a brewery shall include:

(1) The name and address of the brewer filing the claim, the address of the brewery from which the beer was removed, and the address of the brewery to which the beer was returned, as applicable;

(2) The quantity of beer covered by the claim and the rate(s) of tax at which the beer was tax paid or determined;

(3) The amount of tax for which the claim is filed;

(4) The reason for return or voluntary destruction of the beer and the related facts;

(5) Whether the brewer is indemnified by insurance or otherwise in respect of the tax, and if so, the nature of the indemnification;

(6) The claimant's reasons for believing the claim should be allowed;

(7) The date the beer was returned to the brewery, if applicable;

(8) The name of the person from whom the beer was received;

(9) A statement that the tax has been fully paid or determined; and

(10) A reference to the notice (if required) filed under §§ 25.213 or 25.222.

(b) *Beer lost, destroyed, or rendered unmerchantable.* Claims for refund of tax on beer lost, whether by theft or otherwise, or destroyed or otherwise rendered unmerchantable by fire, casualty, or act of God shall contain:

(1) Information required by paragraphs (a) (1), (2), (3), (5), and (6) of this section;

(2) A statement of the circumstances surrounding the loss;

(3) When applicable, the reason the beer rendered unmerchantable cannot be returned to the market for consumption or sale;

(4) Date of the loss, and if lost in transit, the name of the carrier;

(5) A reference incorporating the notice required by § 25.282; and

(6) When possible, affidavits of persons having knowledge of the loss, unless the affidavits are contained in the notice given under § 25.282.

(c) *Additional evidence.* The regional director (compliance) may require the submission of additional evidence in support of any claim filed under this section.

(d) *Filing of claim.* Claim for refund of tax shall be filed on IRS Form 843 with the regional director (compliance) of the region in which the beer was lost, returned, destroyed, or rendered unmerchantable. Claims shall be filed within 6 months after the date of the return, loss, destruction, or rendering unmerchantable. Claims will not be allowed if filed after the prescribed time or if the claimant was indemnified by insurance or otherwise in respect of the tax.

(Sec. 201, Pub. L. 85-859, 72 Stat. 1335, as amended (26 U.S.C. 5056))

§ 25.284 Adjustment of tax.

(a) *Adjustment of tax in lieu of refund.* In lieu of filing a claim for refund of tax as provided in § 25.283, a brewer may make an adjustment (without interest) to the excise tax return, Form 5000.24, for the amount of tax paid on beer returned to the brewery, voluntarily destroyed, lost, destroyed, or rendered unmerchantable.

(b) *Beer returned to brewery other than from which removed.* An adjustment may be made on the excise tax return for the amount of tax paid on beer returned to the brewery under § 25.213. The adjustment will be made on the tax return filed for the brewery to which the beer was returned. The adjustment may not be made prior to the return of beer to the brewery. If the brewer is required to file a notice under § 25.213, the adjustment may not be made until the regional director (compliance) authorizes disposition of the beer.

(c) *Beer voluntarily destroyed.* An adjustment may be made on the excise tax return for the amount of tax paid on beer voluntarily destroyed under Subpart N of this part. The adjustment will be made on the tax return filed for the brewery from which the beer was removed. The adjustment may not be made prior to the destruction of the beer.

(d) *Beer lost, destroyed or rendered unmerchantable.* An adjustment may be made on the excise tax return for the amount of tax paid on beer lost, destroyed, or rendered unmerchantable under § 25.282. The adjustment will be made on the tax return filed for the brewery from which the beer was removed. A brewer may not make an adjustment prior to notification of the regional director (compliance) required under § 25.282(e). When beer appears to have been lost due to theft, the brewer may not make an adjustment to the tax return until establishing to the satisfaction of the regional director (compliance) that the theft occurred before removal from the brewery and occurred without connivance, collusion, fraud, or negligence on the part of the brewer, consignor, consignee, bailee, or carrier, or the employees or agents of any of them.

(e) *Condition of adjustments.* (1) All adjustments will be made within 6 months of the return, destruction, loss, or rendering unmerchantable of the beer.

(2) Adjustment of the tax paid will be made without interest.

(3) An adjustment may not be taken if the brewer was indemnified by insurance or otherwise in respect of the tax.

(f) *Records.* When brewers make adjustments on the excise tax return in lieu of filing a claim, they shall keep the following records;

(1) For beer returned to the brewery or voluntarily destroyed, the records required by §§ 25.283(a) (1), (2), (4), (5), (7), (8), and (10).

(2) For beer lost, destroyed, or rendered unmerchantable, the records required by § 25.283 (a) (1), (2), (5), (b) (2), (3), (4), (5), and (6).

(Sec. 201, Pub. L. 85-859, 72 Stat. 1335, as amended (26 U.S.C. 5056))

§ 25.285 Refund of beer tax excessively paid.

(a) *Eligibility.* A brewer who, under the provisions of § 25.152, is eligible to pay the reduced rate of tax on beer prescribed by 26 U.S.C. 5051 (a)(2), but who did not pay tax at the reduced rate by return, Form 5000.24, during the calendar year for which the brewer was eligible, may file a claim for refund of tax excessively paid on beer for that year. The brewer shall file the claim for refund to tax on IRS Form 843 with the regional director (compliance) in the region in which the brewer's principal place of business is located, within the period of limitation prescribed in 26 U.S.C. 6511(a). For rules relating to the period of limitation on filing claims, see 26 CFR 301.6511(a)-1 and 301.6511(b)-1.

(b) *Calculation of refund.* The brewer shall file the claim based on the quantity of beer eligible to be taxpaid at the lower rate of tax, but which was paid at the higher rate of tax, subject to a maximum of 60,000 barrels of beer per calendar year or the limitation as determined in § 25.152(d). The brewer shall exclude from the claim the quantity of beer removed that calendar year on which a credit or refund at the higher rate of tax has been taken.

(c) *Information to be furnished.* Each claim for refund of tax filed under this section shall include the following information:

(1) Name and address of the brewer.

(2) Quantity of beer covered by the claim as determined in paragraph (b) of this section.

(3) Amount of tax paid in excess.

(4) A statement of the exact number of barrels of beer which the brewer produced during the calendar year.

(5) A statement that the brewer is not a member of a controlled group of brewers (as defined in § 25.152(b)(1) or, if the brewer is a member of a controlled group of brewers, a list of the names and addresses of all the members of the controlled group of brewers and a statement of the combined number of barrels of beer produced by all members of the controlled group in the calendar year.

(6) If the brewer is a member of a controlled group of brewers, a statement of how the 60,000 barrel limitation for the reduced rate of tax is to be apportioned among the members of the controlled group of brewers.

(Act of August 16, 1954, 68A Stat. 791, as amended (26 U.S.C. 6402); sec 201, Pub. L. 85-859, 72 Stat. 1333, as amended (26 U.S.C. 5051))

§ 25.286 Claims for remission of tax on beer lost in transit between breweries.

(a) *Filing of claim.* Claims for remission of tax on beer lost in transit between breweries of the same ownership shall be prepared on Form 2635 by the brewer or the brewer's authorized agent and submitted with Form 5130.9 of the receiving brewery for the month on which the shipment is received. When the loss is by casualty, the claim will be submitted with the Form 5130.9 for the month in which the loss is discovered. When, for valid reasons, the required claim cannot be submitted with Form 5130.9, the brewer shall attach a statement to the monthly report stating the reason why the claim cannot be filed at the time and stating when it will be filed. A claim will not be allowed unless filed with the regional director (compliance) within 6 months of the date of the loss.

(b) *Information to be shown.* The claim will show the following information:

(1) The date of the shipment;

(2) The quantity of beer lost (number and size of packages and their equivalent in barrels), and the rate(s) of tax at which the beer would have been removed for consumption or sale;

(3) The percent of loss;

(4) The specific cause of the loss;

(5) The nature of the loss (leakage, breakage, casualty, etc.);

(6) Information as to whether the claimant has been indemnified by insurance or otherwise in respect to the tax, or has any claim for indemnification; and

(7) For losses due to casualty or accident, statements from the carrier or other persons having personal knowledge of the loss, if available.

(Sec. 201, Pub. L. 85-859, 72 Stat. 1335, as amended, 1389, as amended (26 U.S.C. 5056, 5414))

Subpart U—Records and Reports

§ 25.291 Records.

(a) *General.* (1) The records to be maintained by brewers include:

(i) All individual transaction forms, records, and summaries specifically required by this part;

(ii) All supplemental, auxiliary, and source data used in the compilation of required forms, records, and summaries, and for preparation of reports, returns, and claims; and

(iii) Copies of notices, reports, returns, and approved applications and other documents relating to operations and transactions.

(2) The records required by this part may consist of the brewer's commercial documents, rather than records prepared expressly to meet the requirements of this part, if those documents contain all the details required by this part, are consistent with the general requirements of clarity and accuracy, and do not result in difficulty in the examination.

(b) *Entries.* (1) Each entry required by this part to be made in daily records will be made not later than the close of the business day next succeeding the day on which the transaction occurs.

(2) When the brewer prepares transaction or business records concurrently with the individual operation or transaction and these records contain all the required information with respect to the operation or transaction, entries in daily records may be made not later than the close of business the third business day succeeding the day on which the operation or transaction occurs.

(c) *Content.* (1) All entries in the daily records required by this subpart will show the date of the operation or transaction.

(2) Daily records will accurately and clearly reflect the details of each operation or transaction and, as applicable, contain all data necessary to enable—

(i) Brewers to prepare summaries, reports, and returns required by this part, and

(ii) ATF officers to verify removals of beer and cereal beverages, to verify claims, and to ascertain if there has been compliance with law and regulations.

(d) *Format.* (1) The brewer's copies of prescribed forms which bear all required details will be utilized as daily records.

(2) When a form is not prescribed, the records required by this subpart will be those commercial records used by the brewer in the accounting system and will bear all required details.

(3) The brewer shall maintain daily records required by this part so they clearly and accurately reflect all mandatory information. When the format or arrangement of the daily records is such that the information is not clearly or accurately shown, the regional director (compliance) may require a format or arrangement which will clearly and accurately show the information.

(Sec. 201, Pub. L. 85-859, 72 Stat. 1390, as amended (26 U.S.C. 5415))

§ 25.292 Daily records of operations.

(a) *Daily records.* A brewer shall maintain daily records of operations which show by quantity the following:

(1) Each kind of material received and used in the production of beer and cereal beverage (including the balling and the quantity of each type of material used in the production of wort or concentrated wort).

(2) Beer and cereal beverage produced (including water added after production is determined).

(3) Beer and cereal beverage transferred for and returned from bottling.

(4) Beer and cereal beverage transferred for and returned from racking.

(5) Beer and cereal beverage bottled.

(6) Beer and cereal beverage racked.

(7) Cereal beverage removed from the brewery.

(8) Beer removed for consumption or sale. For each removal, the record will show the date of removal, the person to whom the beer was shipped or delivered (not required for sales in quantitites of one-half barrel or less for delivery at the brewery), and the quantities of beer removed in kegs and in bottles.

(9) Beer removed without payment of tax. For each removal, the record will show the date of removal, the person to whom the beer was shipped or delivered, and the quantities of beer removed in kegs, bottles, tanks, tank cars, tank trucks, tank ships, barges or deep tanks of vessels.

(10) Packaged beer used for laboratory samples at the brewery.

(11) Beer consumed at the brewery.

(12) Beer returned to the brewery from which removed.

(13) Beer returned to the brewery after removal from another brewery owned by the brewer.

(14) Beer reconditioned, used as material, or destroyed.

(15) Beer received from other breweries or received from pilot brewing plants.

(16) Beer and cereal beverage lost due to breakage, theft, casualty, or other unusual cause.

(17) Brewing materials sold or transferred to pilot brewing plants (including the name and address of the person to whom shipped or delivered) and brewing materials used in the manufacture of wort, wort concentrate, malt syrup, and malt extract for sale or removal.

(18) Record of tests measuring devices.

(19) Beer purchased from other brewers in the purchasing brewer's barrels and kegs and such beer sold to other brewers.

(b)[4] *Daily summary records.* A brewer shall maintain daily summaries of the following transactions:

(1) Beer and cereal beverage bottled;

(2) Beer and cereal beverage racked;

(3) Beer removed for consumption or sale;

(4) Beer returned to the brewery from which removed;

(5) Beer returned to the brewery after removal from another brewery owned by the brewer; and

(6) Brewing materials, beer and cereal beverage in process, and finished beer and cereal beverage on hand.

(Sec. 201, Pub. L. 85-859, 72 Stat. 1390, as amended, 1395, as amended (26 U.S.C. 5415, 5555))

§ 25.293 Record of ballings and alcohol content.

The brewer shall maintain a record of the ballings of the wort produced, and of the ballings and the alcohol content of beer and cereal beverage transferred for bottling and racking, between breweries in bulk conveyances, and to pilot brewing plants. Records showing ballings and alcohol content need not be consolidated and averaged daily unless the brewer so desires.

(Sec. 201, Pub. L. 85-859, 72 Stat. 1390, as amended (26 U.S.C. 5415))

§ 25.294 Inventories.

(a) The brewer shall take a physical inventory of beer and cereal beverage at least once each calendar month. The brewer may take this inventory within 7 days of the close of the calendar month for which made.

(b) The brewer shall make a record of inventories of beer or cereal beverage which will show the following:

(1) Date taken;

(2) Quantity of beer and cereal beverage on hand;

(3) Losses, gains, and shortages; and

(4) Signature, under penalties of perjury of the brewer or person taking this inventory.

(c) The brewer shall retain inventory records and make them available for inspection by an ATF officer.

(Sec. 201, Pub. L. 85-859, 72 Stat. 1390, as amended (26 U.S.C. 5415))

§ 25.295 Record of unsalable beer.

A brewer having unsalable beer in packages or tanks in the brewery may destroy, recondition, or use the beer as material. The brewer shall report the quantity of the beer destroyed, reconditioned, or used as materials, in daily records and on Form 5130.9. If the unsalable beer consists of rejects from the packaging operations, the beer may be destroyed without being included in the packaging production records, and, when so destroyed, will be so reported in the brewer's daily records and on Form 5130.9. When reject bottled beer is to be consumed at the brewery or sold to brewery employees, or is cased or otherwise accumulated pending other disposition, the quantity will be included in the packaging production and be so reported in the brewer's daily records and on Form 5130.9.

(Sec. 201, Pub. L. 85-859, 72 Stat. 1389 as amended, 1390, as amended 1395 as amended (26 U.S.C. 5411, 5415, 5555))

§ 25.296 Record of beer concentrate.

(a) *Daily Records.* A brewer who produces concentrate or reconstitutes beer shall maintain daily records which accurately reflect the balling, quantity, and alcohol content of—

(1) Beer entered into the concentration process;

(2) Concentrate produced;

(3) Concentrate transferred to other breweries;

(4) Concentrate exported;

(5) Concentrate received;

(6) Concentrate used in reconstituting beer; and

(7) Beer reconstituted.

(b) *Monthly summary reports.* A brewer who produces concentrates or reconstitutes beer shall report by specific entries on Form 5130.9, the quantity of beer entered into the concentration process, and the quantity of beer reconstituted from concentrate. In addition, the brewer will prepare on Form 5130.9, a summary accounting of all concentrate operations at the brewery for the month. This summary accounting will show, in barrels of 31 gallons with fractions rounded to 2 decimal places:

(1) Concentrate on hand beginning of the month;

(2) Concentrate on hand end of the month;

(3) Concentrate produced;

(4) Concentrate received; and

(5) Specific disposition of concentrate such as "used in reconstitution," "removed for export," "removed to foreign-trade zone," or "transferred to other breweries."

(Sec. 201, Pub. L. 85-859, 72 Stat. 1390, as amended (26 U.S.C. 5415))

§ 25.297 Brewer's monthly report, Form 5130.9

The brewer shall prepare and submit a monthly report of brewery operations on Form 5130.9 to the regional director (compliance) not later than the 15th day of the month following the close of the month for which prepared. The brewer shall retain a copy of the Form 5130.9 for the brewery records.

(Sec. 201, Pub. L. 85-859, 72 Stat. 1390, as amended, 1395 as amended (26 U.S.C. 5415, 5555))

§ 25.298 Excise tax return, Form 5000.24.

All entries on the excise tax return, Form 5000.24, will be fully supported by accurate and complete records. The brewer shall file a 85-859, of Form 5000.24 as a part of the records at the brewery.

(Sec. 201, Pub. L. 85-859, 72 Stat. 1335, as amended, 1390, as amended, 1395, as amended (26 U.S.C. 5061, 5415, 5555))

§ 25.299 Execution under penalties of perjury.

When a return, form, or other document is required by this part or in the instruction on or with the return, form, or other document to be executed under the penalties of perjury, as defined in § 25.11, it will be so executed and will be signed by the brewer or other duly authorized person.

(Act of August 16, 1954, 68A Stat. 749, as amended (26 U.S.C. 6065))

§ 25.300 Retention and preservation of records.

(a) *Place of maintenance.* Records required by this part will be prepared and kept by the brewer at the brewery where the operation or transaction occurs and will be available for inspection by any ATF officer during business hours.

(b) *Reproduction of original records.* Whenever any record, because of its condition, becomes unsuitable for its intended or continued use, the brewer shall reproduce the record by a process under § 25.301. The reproduced record will be treated and considered for all purposes as though it were the original record, and all provisions of law applicable to the original are applicable to the reproduction.

(c) *Retention of records.* Records required by this part will be preserved for a period of not less than three years from the date thereof or the date of the last entry required to be made thereon, whichever is later. The regional director (compliance) may require records to be kept for an additional period not exceeding three years in any case where such retention is deemed necessary or advisable for the protection of the revenue.

(d) *Data Processing.* (1) Notwithstanding any other provision of this section, record data maintained on data processing equipment may be kept at a location other than the brewery if the original transaction (source) records required by §§ 25.292-25.298 are kept available for inspection at the brewery.

(2) Data which has been accumulated on cards, tapes, discs, or other accepted record media will be retrievable within five business days.

(3) The applicable data processing program will be made available for examination if requested by an ATF officer.

(Sec. 201, Pub. L. 85-859, 72 Stat. 1390, as amended (26 U.S.C. 5415))

§ 25.301 Photographic copies of records.

(a) *General.* Brewers may record, copy, or reproduce records required by this part. Brewers may use any process which accurately reproduces the original record and which forms a durable medium for reproducing and preserving the original record.

(b) *Copies of records treated as original records.* Whenever records are reproduced under this section, the reproduced records will be preserved in conveniently accessible files, and provisions will be made for examining, viewing and using the reproduced record the same as if it were the original record, and it will be treated and considered for all purposes as though it were the original record. All provisions of law and regulations applicable to the original are applicable to the reproduced record. As used in this section, "original record" means the record required by this part to be maintained or preserved by the brewer, even though it may be an executed duplicate or other copy of the document.

(Sec. 201, Pub. L. 85-859, 72 Stat. 1390, as amended, 1395, as amended (26 U.S.C. 5415, 5555))

Par. 5. The authority citation for 27 CFR Part 252 is revised to read as follows:

Authority: 5 U.S.C. 552(a); 19 U.S.C. 81c, 1309, 1311; 26 U.S.C. 5008, 5051, 5053, 5055, 5056, 5062, 5066, 5114, 5176, 5204-5207, 5214, 5223, 5301, 5354, 5362, 5367, 5370, 5371, 5401, 5415, 5551, 5552, 5555, 6065, 7302, 7805; 27 U.S.C. 205; 31 U.S.C. 9301, 9303. 9304, 9306; 44 U.S.C. 3504(h).

Par. 6. The table of sections to Part 252 is amended as follows:

PART 252—EXPORTATION OF LIQUORS

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Subpart C—Miscellaneous Provisions

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Evidence of Exportation and Use

Sec.
252.40 Evidence of Exportation: distilled spirits and wine.
252.41 Evidence of lading for use on vessels or aircraft: distilled spirits and wine.

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252.43 Evidence of exportation and lading for use on vessels and aircraft: beer.

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Subpart D—Bonds and Consents of Surety

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252.60 Brewer's bond, Form 5130.22.

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Subpart G—Removal of Beer and Beer Concentrate Without Payment of Tax for Exportation, Use as Supplies on Vessels and Aircraft, or Transfer to a Foreign-Trade Zone

252.141 General.
252.142 Notice, Form 1689.
252.143 Containers.
252.144 Export marks.
252.145 Consignment, shipment and delivery.
252.146 Disposition of forms.
252.147 Return of beer or beer concentrate.
252.148 Brewer's report.
252.149 Losses.
252.150 Charges and credits on bond.

Subpart Ga [Removed]

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Subpart N—Proceedings at Ports of Export

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Alternate Procedures

252.295 Exception for export of beer.

Subpart O—Losses

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Beer and Beer Concentrate

252.320 Loss of beer and beer concentrate in transit.

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Par. 7. Section 252.3 is revised by updating the part number for Part 245. As revised, § 252.3 reads as follows:

§ 252.3 Related regulations.

Regulations relating to this part are listed below:

19 CFR Chapter I—Customs Regulations
27 CFR Part 1—Basic Permit Requirements Under the Federal Alcohol Administration Act
27 CFR Part 4—Labeling and Advertising of Wine
27 CFR Part 19—Distilled Spirits Plants
27 CFR Part 21—Formulas for Denatured Alcohol and Rum
27 CFR Part 25—Beer
27 CFR Part 30—Gauging Manual
27 CFR Part 194—Liquor Dealers
27 CFR Part 231—Taxpaid Wine Bottling Houses
27 CFR Part 240—Wine
31 CFR Part 225—Acceptance of Bonds, Notes, or Other Obligations Issued or Guaranteed by the United States as Security in Lieu of Surety of Sureties on Penal Bonds

Par. 8. Section 252.11 is amended by changing the citation for Part 245 to Part 25 in the definition of "brewery." As revised, the definition reads as follows:

§ 252.11 Meaning of terms.

* * * * *

Brewery. Premises established under Part 25 of this chapter for the production of beer.

* * * * *

Par. 9. Section 252.40 is amended by changing the section title and by making a similar change in the first sentence. As revised, the section heading and the introductory text of § 252.40 read as follows:

§ 252.40 Evidence of exportation: distilled spirits and wine.

The exportation of any shipment of distilled spirits or wine may be evidenced by:

* * * * *

Par. 10. Section 252.41 is revised by adding distilled spirits and wine to the section title, and by deleting beer from the text of the section. As revised, § 252.41 reads as follows:

§ 252.41 Evidence of lading for use on vessels or aircraft: distilled spirits and wine.

The lading of distilled spirits or wine for use on vessels or aircraft may be evidenced by submission of a receipt procured under the provisions of § 252.268.

(Sec. 309, Tariff Act of 1930, 46 Stat. 690, as amended (19 U.S.C. 1309); sec. 201, Pub. L. 85-859, 72 Stat. 1362, as amended, 1380, as amended (26 U.S.C. 5214, 5362))

Par. 11. A new § 252.43 is added giving evidence of exportation and use on vessels and aircraft for beer only. As added, § 252.43 reads as follows:

§ 252.43 Evidence of exportation and lading for use on vessels and aircraft: beer.

(a) *Exportation.* The exportation of beer to a foreign country or possession will be fully evidenced by any of the following documents:

(1) Customs certification of lading and clearance on Form 1582-B or Form 1689 under Subpart M of this part; or

(2) For shipment to the armed forces, certification by a military officer on Form 1582-B or Form 1689 under § 252.275; or

(3) A bill of lading (§ 252.250), a railway express receipt (§ 252.251), or an air express or air freight bill of lading (§ 252.252), when such bills of lading or receipt show exportation to a foreign country or possession; or

(4) A certificate issued by an export carrier under § 252.253 attesting to exportation to a foreign country or possession; or

(5) A landing certificate issued by an official of the country or possession where the beer has actually landed; or

(6) Any other evidence of exportation approved by the regional director (compliance).

(b) *Use as supplies on vessels and aircraft.* The lading of beer for use on vessels or aircraft will be fully evidenced by:

(1) For fishing vessels only, customs certification of lading and use of Form 1581-B or Form 1689 under § 252.23; or

(2) Customs certification of lading on Form 1582-B or Form 1689 under §§ 252.264 or 252.282; or

(3) Any other evidence of exportation approved by the regional director (compliance).

(Sec. 309, Tariff Act of 1930, 46 Stat. 690, as amended (19 U.S.C. 1309); sec. 201, Pub. L. 85-859, 72 Stat. 1334, as amended, 1335, as amended (26 U.S.C. 5053, 5055))

§ 252.51 [Amended]

Par. 12. Section 252.51 is amended by changing the reference to Part 245 to read Part 25 in the last sentence of the section.

Par. 13. Section 252.60 is revised by changing the brewer's bond number, the part number, and by deleting the proviso. As revised, § 252.60 reads as follows:

§ 252.60 Brewer's bond, Form 5130.22.

When beer or beer concentrate is removed from a brewery without payment of tax for any of the purposes authorized in § 252.141, the brewer's bond, Form 5130.22, furnished under the provisions of Part 25 of this chapter will cover the removals.

(49 Stat. 999, as amended (19 U.S.C. 81c); sec. 201, Pub. L. 85-859, 72 Stat. 1334, as amended, 1388, as amended (26 U.S.C. 5053, 5401))

Par. 14. Subpart G is revised by incorporating into it the provisions of Subpart Ga relating to the exportation of beer concentrate. As revised, Subpart G reads as follows:

Subpart G—Removal of Beer and Beer Concentrate Without Payment of Tax for Exportation, Use as Supplies on Vessels and Aircraft, or Transfer to a Foreign-Trade Zone

§ 252.141 General.

(a) *Beer.* Beer may, subject to this part, be removed from the brewery without payment of tax for:

(1) Export to a foreign country;

(2) Use as supplies on the vessels and aircraft described in § 252.21; or

(3) Transfer to and deposit in a foreign-trade zone for exportation or for storage pending exportation.

(b) *Beer concentrate.* Concentrate, produced from beer under the provisions of Subpart R of Part 25 of this chapter may, subject to this part, be removed from the brewery without payment of tax for:

(1) Export to a foreign country; or

(2) Transfer to and deposit in a foreign-trade zone for exportation or for storage pending exportation.

(c) *Bond.* All removals of beer or beer concentrate will be made by the brewer under the provisions of the brewer's bond, Form 5130.22 as prescribed in § 252.60.

(Sec. 309, Tariff Act of 1930, 46 Stat. 690, as amended (19 U.S.C. 1309); sec. 3, Act of June 18, 1934, 48 Stat. 999, as amended (19 U.S.C. 81c); sec. 201, Pub. L. 85-859, 72 Stat. 1334, as amended (26 U.S.C. 5053))

§ 252.142 Notice, Form 1689.

When a brewer intends to remove beer or beer concentrate without payment of tax from a brewery for exportation or for transportation to and deposit in a foreign-trade zone, or remove beer for use as supplies on vessels and aircraft, the brewer shall prepare a notice on Form 1689 for each withdrawal. The brewer shall execute Form 1689 in quadruplicate, except when the shipment is for use on aircraft the brewer shall execute an extra copy which will be marked "Consignee's Copy."

(Sec. 309, Tariff Act of 1930, 46 Stat, 690, as amended (19 U.S.C. 1309); sec. 3, Act of June 18, 1934, 48 Stat. 999, as amended (19 U.S.C. 81c); sec. 201, Pub. L. 85-859, 72 Stat. 1334, as amended (26 U.S.C. 5053))

§ 252.143 Containers.

(a) *Beer.* Beer being exported, used as supplies on vessels and aircraft, or transferred to and deposited in a foreign-trade zone, without payment of tax, may be removed in bottles, kegs, or bulk containers.

(b) *Beer concentrate.* Concentrate may not be removed for export, or for transfer to and deposit in a foreign-trade zone, in containers of the kind ordinarily used by brewers for the removal of beer for consumption or sale.

§ 252.144 Export marks.

(a) *General Requirement.* In addition to the marks and brands required to be placed on containers of beer or beer concentrate under the provisions of Part 25 of this chapter, the brewer shall mark the word "Export" on each container or case of beer, or the words "Beer concentrate for export" on each container of beer concentrate, before removal from the brewery for any exportation authorized under this subpart.

(b) *Exceptions.* A brewer need not apply the mark "Export" on cases of beer being exported under the following circumstances:

(1) When beer is being directly exported by the brewer, and the brewer can furnish documentation (such as an ocean or air freight bill of lading, or a foreign landing certificate) that the beer was directly exported to a foreign country;

(2) When cased beer is transferred from a brewery to a foreign-trade zone for export or for storage pending exportation; or

(3) When cased beer is exported to the military.

(Sec. 309, Tariff Act of 1930, 46 Stat. 690, as amended (19 U.S.C. 1309); sec. 3, Act of June 18, 1934, 48 Stat. 999, as amended (19 U.S.C. 81c); sec. 201, Pub. L. 85-859, 72 Stat. 1334, as amended (26 U.S.C. 5053))

§ 252.145 Consignment, shipment and delivery.

The consignment, shipment and delivery of beer or beer concentrate removed from a brewery without payment of tax under this subpart will be in accordance with the applicable provisions of Subpart M of this part.

(Sec. 201, Pub. L. 85-859, 72 Stat. 1334, as amended (26 U.S.C. 5053))

§ 252.146 Disposition of forms.

On removal of the beer or beer concentrate withdrawn under the provisions of this subpart, the brewer shall forward one copy of Form 1689 to the regional director (compliance), retain one copy for the files, and deliver the original and remaining copy to the officer to whom the shipment is consigned, or in whose care it is shipped, as required by Subpart M of this part. When the shipment is for delivery for use on aircraft, the copy marked "Consignee's Copy," provided for in § 252.142, will be forwarded to the airline company at the airport.

(Sec. 309, Tariff Act of 1930, 46 Stat. 690, as amended (19 U.S.C. 1309); sec. 201, Pub. L. 85-859, 72 Stat. 1334, as amended (26 U.S.C. 5053))

§ 252.147 Return of beer or beer concentrate.

Beer or beer concentrate removed without payment of tax under the provisions of this subpart may be returned to be brewery from which removed if lading of the beer or beer concentrate is delayed more than the period provided in § 252.262 or when the brewer has other good cause for return. The brewer shall request the district director of customs to release the beer or beer concentrate for return to the brewery and, on such release, the district director of customs shall endorse both copies of the appropriate Form 1689 to show the release of the beer or beer concentrate and shall return the forms to the brewer. On return of the beer or beer concentrate to the brewery, the brewer shall record the quantity in the brewery daily records, mark the two copies of Form 1689 returned by the district director of customs, "Canceled—Returned to Brewery," and forward one copy to the regional director (compliance).

(Sec. 201, Pub. L. 85-859, 72 Stat. 1334, as amended, 1335, as amended (26 U.S.C. 5053, 5056))

§ 252.148 Brewer's report.

The brewer's records shall reflect the quantity of beer or beer concentrate removed without payment of tax under this subpart, and the brewer shall report the quantity of beer or beer concentrate so removed on Form 5130.9. The total quantity of beer or beer concentrate involved in all export shipments returned during any calendar month will be reported as a separate entry on Form 5130.9.

(Approved by the Office of Management and Budget under control number 1512-0052.)

(Sec. 201, Pub. L. 85-859, 72 Stat. 1334, as amended (26 U.S.C. 5053))

§ 252.149 Losses.

When there has been a loss of beer or beer concentrate while in transit from the brewery to a port for exportation, or for lading as supplies on a vessel or aircraft, or to a foreign-trade zone, the provisions of Subpart O of this part, with respect to losses are applicable.

(Sec. 201. Pub. L. 85-859, 72 Stat. 1333, as amended, 1334, as amended (26 U.S.C. 5051, 5053))

§ 252.150 Charges and credits on bond.

The removal of beer concentrate from the brewery without payment of tax under this subpart will constitute a charge against the brewer's bond, Form 5130.22, of an amount equal to the tax which would be due on removal for consumption or sale, including penalties and interest, on all beer used to produce the concentrate which is removed. The satisfactory accounting for concentrate so removed will constitute a credit to the bond.

(Sec. 201, Pub. L. 85-859, 72 Stat. 1333, as amended, 1334, as amended (26 U.S.C. 5051, 5053))

Par. 15. Subpart Ga is removed.

§ 252.223 [Amended]

Par. 16. Section 252.223 is amended by changing the reference to Part 245 to read Part 25.

Par. 17. A new center headnote following § 252.290, and a new § 252.295 are added to Subpart N, which relieves brewers or exporters from obtaining customs certification on Forms 1582-B or 1689 when other proof of exportation is submitted. As added, the undesignated center headnote and § 252.295 read as follows:

Alternate Procedures

§ 252.295 Exception for export of beer.

The provisions of this subpart do not apply in the case of beer when the exporter or claimant obtains proof of exportation other than certification by the military or customs certification of lading and use under § 252.43. Brewers and exporters shall prepare Forms 1582-B or 1689, as applicable, to cover exportation of beer, but customs or military certification on them is not required when other proof of exportation is used.

Par. 16. The undesignated center headnote between § 252.318 and § 252.320 is changed from "BEER" to read "BEER AND BEER CONCENTRATE".

Par. 17. Section 252.320 is revised by expanding coverage of the section to include beer concentrate and by making editorial changes. As revised, § 252.320 reads as follows:

§ 252.320 Loss of beer and beer concentrate in transit.

(a) *Losses not requiring inspection.* When, on receipt by the regional director (compliance) of Form 1689 from the officer required to certify it under the provisions of Subpart N of this part, it is disclosed that there has been a loss of beer or beer concentrate after removal from the brewery without payment of tax while in transit to the port of export, the vessel or aircraft, or the foreign-trade zone, and the report of the certifying officer shows that the loss was a normal one caused by casualty, leakage, or spillage, the regional director (compliance) will allow the loss.

(b) *Losses requiring inspection.* When it is disclosed that the loss of beer or beer concentrate is large or unusual, the regional director (compliance) will conduct an investigation of the loss. When it is disclosed that the loss in transit has occurred by reason of casualty, leakage or spillage, credit for the loss will be allowed. When the investigation discloses evidence indicating that the loss resulted from theft or from fraud, the regional director (compliance) will afford the brewer opportunity to submit a written explanation with respect to the causes of the loss before taking further action.

(Sec. 201. Pub. L. 85-859, 72 Stat. 1333, as amended, 1334, as amended, 1335, as amended (26 U.S.C. 5051, 5053, 5056))

Par. 18. Section 252.321 is revised by expanding coverage of the section to include beer concentrate. As revised, § 252.321 reads as follows:

§ 252.321 Tax assessed on loss not accounted for.

The regional director (compliance) shall make demand on the brewer for an amount equal to the tax which would be due on removal for consumption or sale, including penalties and interest, on: (a) The quantity of beer not satisfactorily accounted for, or (b) the quantity of beer used to produce the quantity of beer concentrate which is not satisfactorily accounted for.

(Sec. 201, Pub. L. 85-859, 72 Stat. 1383, as amended, 1334, as amended (26 U.S.C. 5051, 5053))

Signed: April 25, 1985.

Stephen E. Higgins,
Director.

Approved: September 20, 1985.

David D. Queen.
Acting Assistant Secretary
(Enforcement and Operations).

(Filed by the Office of the Federal Register on March 4, 1986 8:45 am and published in the Federal Register for March 5, 1986 51 F.R. 7666)

TITLE 27—ALCOHOL, TOBACCO PRODUCTS AND FIREARMS—CHAPTER I—BUREAU OF ALCOHOL, TOBACCO AND FIREARMS, DEPARTMENT OF THE TREASURY

Principal Place of Business on Beer Labels

T.D. ATF-225

27 CFR Parts 7 and 25

AGENCY: Bureau of Alcohol, Tobacco and Firearms, Department of the Treasury

ACTION: Final rule, Treasury decision.

SUMMARY: This final rule allows multiplant brewers to show their principal place of business as the only address on labels of beer bottles and cans, and on beer key bungs or tap covers, in lieu of listing the addresses of all breweries operated by the same company. This final rule is a result of a petition from Anheuser-Busch Companies, and a notice of proposed rulemaking, Notice No. 573, published in the **Federal Register** of October 15, 1985, at 50 FR 41701.

This amendment will benefit multiplant brewers by allowing them to use a "universal" label and a "universal" bung or tap cover at all of their breweries It will relieve industry and Government of the necessity of approving new beer labels, including bungs or tap covers, whenever a brewing company buys, builds, acquires, sells, closes, or otherwise disposes of a brewing location.

EFFECTIVE DATE: May 1, 1986.

FOR FURTHER INFORMATION CONTACT:

John A. Linthicum, FAA, Wine and Beer Branch, (202) 566-7626.

SUPPLEMENTARY INFORMATION:

Previous Label Requirements

Under previous regulations implementing the Internal Revenue Code of 1954, 26 U.S.C. 5412, labels of bottles and can of domestic beer, and bungs or tap covers of domestic draft beer were required to show the brewer's name and the address of the place of production. In 1968, the regulation on bottles and cans (27 CFR 245.126) was amended to permit a brewer that owns or operates two or more breweries to show the actual place of production as part of a listing of all breweries owned and operated by the brewer in lieu of showing the actual place of production only. Brewers that chose this alternative, however, were also required to indicate the actual place of production by means of a coding system which cuts, notches, stamps or otherwise marks the label, crown, lid, chime or other part of the label or the bottle or can. This coding system allows the brewer and ATF to determine the actual location at which the beer in a particular package was produced and taxpaid. This information is necessary for the protection of the revenue.

Under the Federal Alcohol Administration Act (FAA Act), 27 U.S.C. 205(e)(2), the Secretary of the Treasury is required to issue regulations to provide the consumer with adequate information as to the manufacturer or bottler or importer of malt beverages sold or offered for sale in interstate commerce. Regulations under the FAA Act, 27 CFR 7.25, require that containers of domestic malt beverages show the name of the bottler or packer and the place where bottled or packed. In line with the 1968 amendment previously described, ATF has permitted the listing on the label of all brewery locations operated by the brewer as long as the actual place of production of the malt beverage appears as part of the list. This FAA Act requirement permits the consumer to know the identity of the brewer responsible for producing the malt beverage.

Anheuser-Busch Petition

Anheuser-Busch Companies, Inc. petitioned ATF to amend 27 CFR 245.126 to allow showing the brewer's principal place of business on the label in lieu of listing the actual place of production or listing all of the breweries. Under their proposal, the actual brewing location would not be required to appear on a label but would be identified by means of the coding system established in 1968. As an example, all of the petitioner's breweries could utilize an identical label showing "Anheuser-Busch, Inc., St. Louis, Missouri" as the name and address of the brewer. The actual producing brewery would be indicated by means of their existing coding system.

Anheuser-Busch stated they now use a universal label, *i.e.*, the identical label is used at all of their breweries. This label lists all of their plants with the producing brewery indicated by a coding system. The petitioner stated that this label has numerous advantages over a label showing only the place of production because the universal label eliminates separate label inventories for each brewery, avoids misshipments of labels to breweries, and avoids mislabeled products which can result in product destruction or special label permissions.

In support of their petition, Anheuser-Busch stated that the listing of all brewery locations on a beer label is aesthetically undesirable and produces label clutter. They further stated that the coding system employed under 27 CFR 245.126 would continue to be used in order to identify the producing brewery where the beer was taxpaid. Thus, the principal place of business label together with the coding system is sufficient to protect the revenue. From the consumer standpoint, Anheuser-Busch notes that the present listing of all brewery locations does not inform the consumer where beer in a particular package was produced. They further stated that public inquiries are generally directed to their corporate offices in St. Louis, and that the principal place of business address on a beer label would satisfy FAA requirements by enabling consumers to know who is responsible for manufacturing the beer.

Anheuser-Busch cited regulations of the Food and Drug Administration, 21 CFR 101.5(e), as a precedent to allow principal place of business address labeling on beer. Those FDA regulations state "If a person manufactures, packs or distributes a food at a place other than his principal place of business, the label may state the principal place of business in lieu of the actual place where such food was manufactured or packed or is to be distributed, unless such statement would be misleading."

Discussion

ATF believes Anheuser-Busch's petition has merit and that there are additional reasons in support of it. If major brewers were to use a label showing only the principal place of business, the number of submissions of labels for approval under the FAA Act would be substantially reduced. Under the previous regulations, new labels were required to be submitted when the listing of breweries is affected by brewery openings, closings, sales or other changes. For brewers operating multiple breweries, producing several brands of beer, and producing numerous package sizes and styles, this may result in several hundred label submissions necessitated by the acquisition or disposition of a single brewery. Thus, switching to the principal place of business on the label would save paperwork for both brewers and the Government.

ATF does not believe that the listing of only the brewer's principal place of business on the label would be deceptive to consumers. We believe that consumers today know that many large brewers operate more than one brewery. Moreover, the present listing of all brewing locations on the label does not inform the consumer where beer in a specific bottle was produced because the consumer generally does not understand brewers' coding systems. ATF notes that many brewers market brands of beer nationwide and that they strive to achieve a uniform taste in their products regardless of the actual brewing location. Thus, ATF does not believe the actual place of production of beer produced by today's multiplant brewers is meaningful to consumers.

Proposal

ATF believes the listing of the principal place of business on a beer label in lieu of the actual place of business would meet statutory criteria under both the Internal Revenue Code and the Federal Alcohol Administration Act. Therefore, we proposed, in Notice No. 573, published in the **Federal Register** of October 15, 1985, at 50 FR 41701, to amend regulations in Parts 7 and 245 to permit listing of the principal place of business. [Part 245 was recodified as Part 25 at 51 FR 7666, May 5, 1986, effective May 1, 1986.]

In order to prevent consumer deception, ATF believes the brewer's principal place of business should be the location of a brewery. This is necessary to prevent, for example, a multiplant brewer from using a corporate office in some other city as the principal place of business.

ATF is also concerned that use of some addresses as the principal place of business of a brewer could be misleading or deceptive in conjunction with certain geographic brand names or slogans used on malt beverage labels. We therefore proposed to amend 27 CFR 7.25(a) to give the Director of ATF the authority to require the actual place of production be shown on a malt beverage label if use of the principal place of business would cause confusion or deception as to the geographic origin of the beer. In addition, Notice No. 573 proposed to amend 27 CFR 245.126 Bottles, and 245.127 Cases. [§§ 245.126 and 245.127 were recodified as §§ 25.142 and 25.143, respectively, at 51 FR 7684, May 5, 1986 effective May 1, 1986.]

In response to Notice No. 573, ATF received two comments both in favor of the proposed changes. In addition, one commentor, G. Heileman Brewing Co., was in favor of extending the same privilege to draft beer kegs, by allowing the principal place of business to appear on the keg, bung, tap cover, or on a separate label attached to the keg. Since Notice No. 573 specifically asked for comments on extending this labeling change to barrels and kegs, we are adopting this comment. Therefore, the final rule also amends 27 CFR 245.125 to provide for showing the principal place of business on barrels and kegs, in lieu of the actual place of production. [§ 245.125 was recodified as § 25.141 at 51 FR 7684, May 5, 1986, effective May 1, 1986.]

* * * * *

List of Subjects

27 CFR Part 7

Advertising, Beer, Consumer protection, Customs duties and inspection, Imports, Labeling.

27 CFR Part 25

Administrative practice and procedure, Authority delegations, Beer, Claims, Electronic fund transfers, Excise taxes, Labeling, Packaging and containers, Reporting and recordkeeping requirements, Research, Surety bonds, Transportation.

Drafting Information

The principal author of this document is John A. Linthicum, FAA, Wine and Beer Branch, Bureau of Alcohol, Tobacco and Firearms.

Authority and Issuance

PART 7—LABELING AND ADVERTISING OF MALT BEVERAGES

27 CFR Part 7 is amended as follows:

Paragraph 1. The authority citation for Part 7 is revised to read as follows:

Authority: 27 U.S.C. 205.

Paragraph 2. Paragraph (a) of § 7.25 is revised to permit showing the principal place of business in lieu of the address of the bottler or packer. As revised, § 7.25(a) reads as follows:

§ 7.25 Name and address.

(a) *Domestic malt beverages.* (1) On labels of containers of domestic malt beverages there shall be stated the name of the bottler or packer and the place where bottled or packed. The bottler's or packer's principal place of business may be shown in lieu of the actual place where bottled or packed if the address shown is a location where bottling or packing operation takes place. The Director may disapprove the listing of a principal place of business if its use would create a false or misleading impression as to the geographic origin of the beer.

(2) If malt beverages are bottled or packed for a person other than the actual bottler or packer there may be stated in addition to the name and address of the bottler or packer (but not in lieu of), the name and address of such other person immediately preceded by the words "bottled for," "distributed by," or other similar appropriate phrase.

* * * * *

(Approved by the Office of Management and Budget under Control Number 1512-0474)

PART 25—BEER

27 CFR Part 25 is amended as follows:

Paragraph 3. The authority citation for Part 25 continues to read as follows:

Authority: 5 U.S.C. 552(a); 19 U.S.C. 81c, 1309; 26 U.S.C. 5002, 5051-5054, 5056, 5061, 5091, 5111, 5113, 5142, 5143, 5146, 5222, 5401-5417, 5551, 5552, 5555, 5556, 5671, 5673, 5684, 6011, 6061, 6065, 6091, 6109, 6151, 6301, 6302, 6311, 6313, 6402, 6651, 6656, 6676, 6806, 7011, 7342, 7606, 7805; 31 U.S.C. 9301, 9303-9308.

Paragraph 4. Paragraph (b) of § 25.141 is revised to permit showing the principal place of business on beer keg bungs, or on beer keg tap covers, or on a separate label attached to the beer keg, in lieu of showing the place of production. As revised, § 25.141(b) reads as follows;

§ 25.14 Barrels and kegs.

* * * * *

(b) *Breweries of same ownership.* (1) If two or more breweries are owned or operated by the same person, firm, or corporation (as defined in § 25.181), the place of production:

(i) May be shown as the only location on the bung, or on the tap cover, or on a separate label attached to the keg;

(ii) May be included in a listing of the locations of breweries qualified under this part if the place of production is not given less emphasis than any of the other locations; or

(iii) Need not be shown if the brewer's principal place of business is shown in lieu of any other location. The brewer's principal place of business will be the location of a brewery operated by the brewer and qualified under this part.

(2) If the location of two or more breweries is shown on the keg, bung, tap cover, or on a separate label attached to the keg (paragraph (b)(1)(ii)), or if the brewer's principal place of business is shown in lieu of the actual place of production (paragraph (b)(1)(iii)), the brewer shall indicate the actual place of production by printing, coding or other markings on the keg, bung, tap cover, or on a separate label attached to the keg. The coding system employed will permit an ATF officer to determine the place of production (including street address if two or more breweries are located in the same city) of the beer. The brewer shall notify the regional director (compliance) prior to employing a coding system.

* * * *

(Approved by the Office of Management and Budget under Control Number 1512-0474)

Paragraph 5. Paragraph (b) of § 25.142 is revised to permit showing the principal place of business on a beer label in lieu of showing the place of production. As revised, § 25.142(b) reads as follows:

§ 25.142 Bottles.

* * * * *

(b) *Breweries of same ownership.* (1) If two or more breweries are owned or operated by the same person, firm, or corporation (as defined in § 25.181), the place of production:

(i) May be shown as the only location on the label;

(ii) May be included in a listing of the locations of breweries qualified under this part if the place of production is not given less emphasis than any of the other locations; or

(iii) Need not be shown if the brewer's principal place of business will be the location of a brewery operated by the brewer and qualified under this part.

(2) If the location of two or more breweries is shown on the label (paragraph (b)(1)(ii)), or if the brewer's principal place of business is shown on the label in lieu of the actual place of production (paragraph (b)(1)(iii)), the brewer shall indicate the actual place of production by printing, coding or other markings on the label, bottle, crown or lid. The coding system employed will permit an ATF officer to determine the place of production (including street address if two or more breweries are located in the same city) of the beer. The brewer shall notify the regional director (compliance) prior to employing a coding system.

* * * * *

(Sec. 201, Pub. L. 85-859, 72 Stat. 1389, as amended (26 U.S.C. 5412))

(Approved by the Office of Management and Budget under Control Number 1512-0474)

Paragraph 6. Paragraph (b) of § 25.143 is revised to permit showing the principal place of business on a beer case in lieu of the place of production. As revised, § 25.143(b) reads as follows:

§ 25.143 Cases.

* * * * *

(b) *Other information.* The brewer may show on a case or shipping container the place of production (city and, when necessary for identification, State), and the addresses of other breweries owned by the same person, firm, or corporation (as defined in § 25.181). If only one address is shown, it will be that of the producing brewery, or of the brewer's principal place of business.

(Sec. 201, Pub. L. 85-859, 72 Stat. 1389, as amended (26 U.S.C. 5412))

(Approved by the Office of Management and Budget under Control Number 1512-0474)

Signed: January 27, 1986.

Stephen E. Higgins
Director.

Approved: February 24, 1986.

Francis A. Keating, III
Assistant Secretary
(Enforcement and Operations).

(Filed by the Office of the Federal Register on March 11, 1986 8:45 am and published in the Federal Register for March 12, 1986, 51 F.R. 8490)

III

Bureau Procedures

Subpart A—ALCOHOL

CERTIFICATION AND ANALYSIS OF U.S. WINE FOR EXPORT TO THE EUROPEAN ECONOMIC COMMUNITY (EEC)

ATF Proc. 86—1

SECTION 1. PURPOSE.

1.01 The purpose of this procedure is to outline the new requirements of the European Economic Community (hereinafter referred to as the EEC or the Community) as they apply to certification and analysis of commercial shipments of U.S. grape table wine and U.S. sparkling grape wine, only.

SECTION 2. DEFINITIONS.

2.01 *U.S. Wine.* For the purposes of this procedure, the term, U.S. wine, refers only to U.S. grape table wine and U.S. sparkling grape wine intended for export to the Community for marketing for direct human consumption.

2.02 *The Member States of the Community.* The Member States of the Community presently include: Belgium, Denmark, Federal Republic of Germany, France, Greece, Ireland, Italy, Luxembourg, the Netherlands, Portugal, Spain and the United Kingdom.

2.03 *Consignment.* For the purposes of this procedure, a consignment is the quantity of the same wine consigned by one consignor to one consignee for the purpose of marketing.

2.04 *Actual Alcoholic Strength.* For the purposes of this procedure, actual alcoholic strength means percent alcohol content by volume at 20°C.

2.05 *Potential Alcoholic Strength.* For the purposes of this procedure, potential alcoholic strength means the percent alcohol content by volume at 20°C which would result from complete fermentation of all fermentable sugars.

2.06 *Total Alcoholic Strength.* For the purposes of this procedure, total alcoholic strength means the sum of the actual and potential alcoholic strength.

SECTION 3. BACKGROUND.

3.01 ATF Procedure 73-6 outlined the EEC certification and analysis requirements which were applicable at the time that procedure was issued in 1973.

3.02 Subsequent to the issuance of that procedure, the EEC issued "Commission Regulation (EEC) No. 2115/76 of August 20, 1976 laying down general rules for the import of wines, grape juice and grape must". This regulation exempted U.S. wine in containers of four liters or less from certification and analysis requirements on the basis that annual U.S. exports of such products to the Community totaled less than 1000 hectoliters. Thus, from the time of this exemption to the present, U.S. wineries did not have to comply with EEC certification and analysis requirements for such products.

3.03 On December 20, 1985, the Community published "Commission Regulation (EEC) No. 3590/85 of December 18, 1985 on the certificate and analysis report required for the importation of wine, grape juice and grape must". This regulation makes three fundamental changes to the present EEC certification and analysis requirements, i.e.,:

(a) except as provided in Section 5.02, effective April 2, 1986, it no longer exempts the United States from certification and analysis for shipments of wine in containers of four liters or less;

(b) except as specified in Section 5.01, it requires that U.S. wine exported from the U.S. on or after April 2, 1986 be accompanied by Forms V.I.1 and prescribes a new model of Form V.I.1 (see Section 5.06). (The procedures outlined herein relate only to this new model of Form V.I.1.), and,

(c) it makes provision for use of new, simplified procedures for completing the new Forms V.I.1 for shipments of wine meeting the conditions referenced in Section 7.01.

3.04 The EEC established April 2, 1986 as the effective date of Commission Regulation No. 3590/85 (Attachment I) to allow those wishing to export to the Community sufficient time to adjust to the new procedures and to print the new forms.

3.05 The simplified procedures noted in Section 3.03(c) considerably minimize administrative burdens by allowing authorized U.S. Producers to self-certify the new Forms V.I.1. They also minimize financial burdens by reducing the number of analyses required from a total of eight to a total of three, i.e., actual alcoholic strength, total sulfur dioxide and total acidity.

SECTION 4. EEC REGULATIONS.

4.01 "Commission Regulation (EEC) No. 3590/85 of December 18, 1985 on the certificate and analysis report required for the importation of wine, grape juice and grape must" is included as Attachment I. This regulation outlines the certification and analysis procedures referenced in Sections 6 and 7.

4.02 "Council Regulation (EEC) No. 1873/84 of June 28, 1984 authorizing the offer or disposal for direct human consumption of certain imported wines which may have undergone oenological processes not provided for in Regulation (EEC) No. 337/79" is included as Attachment II. This regulation specifies the wine treating materials which the EEC accepts for use in the production of U.S. wine.

4.03 ATF will make every effort to alert the public to any other information having a significant bearing on certification, analysis and treatment of U.S. wine; however, the ultimate responsibility to keep abreast of EEC regulations lies with U.S. exporters. U.S. exporters and others concerned should contact the European Community Information Service at 2100 M Street, NW, Washington, DC 20037 for additional copies of, or further information concerning, Community regulations.

SECTION 5. GENERAL INSTRUCTIONS APPLICABLE TO FORMS V.I.1.

5.01 Forms V.I.1 are not required for any wine originating in or coming from non-EEC countries in containers of two liters or less, where the total quantity transported, even if it is composed of two or more individual consignments, does not exceed 60 liters.

5.02 Forms V.I.1 are not required for U.S. wine packaged in containers of four liters or less which enters the Community before September 30, 1986, provided satisfactory proof is offered to Community customs authorities that it left the U.S. before April 2, 1986.

5.03 Except as indicated in Section 5.01, Forms V.I.1 shall, as in the past, accompany each consignment of U.S. wine which is not packaged in containers of four liters or less. U.S. exporters may continue to use existing supplies of the present model of Forms V.I.1 for shipments of such wine which enter the Community before September 30, 1986, provided satisfactory proof is offered to Community customs authorities that it left the U.S. before April 2, 1986.

5.04 Except as indicated in Section 5.01, the new model of Forms V.I.1, as described in Section 5.06, shall accompany each consignment of U.S. wine shipped on or after April 2, 1986 (see Sections 6 and 7).

5.05 An original Form V.I.1 and four carbon copies shall be prepared, when required, for each consignment of U.S. wine.

5.06 Exporters are required to provide their own supply of Forms V.I.1 following the model shown in Annex II of Commission Regulation No. 3590/85 (Attachment I). Form V.I.1 shall:

(a) be approximately 210 mm x 297 mm in size;

(b) be printed on white paper weighing at least 40 grams per square meter;

(c) bear the name and address or the mark of the printer;

(d) be printed in English.

5.07 Forms V.I.1 shall be completed in the English language. The information provided on the original shall be clearly legible on all four copies and shall be either typed or printed in ink using block letters. They shall contain no erasures or alterations. Where necessary, changes shall be made by striking out the wrong entry and inserting the required details. Any change made in this way shall be approved by its author and stamped, as the case may be, by the official agency, the laboratory or the customs authorities.

SECTION 6. PROCEDURES FOR PREPARING FORMS V.I.1 FOR THE EXPORT OF U.S. WINE WHICH DOES NOT MEET THE REQUIREMENTS OF SECTION 7.01.

6.01 The exporter shall complete Forms V.I.1 as follows:

(a) *Exporter (Box 1).* Identify the name and complete address of the exporter. If the exporter is a wine producer, the name and address shall be that as shown on the "Wine Producer's and Blender's Basic Permit" (ATF F 5120.18) issued to the producer. Otherwise, the name and address shall be that as shown on the "Wholesaler's Basic Permit" (ATF F 5170.3) issued to the exporter.

(b) *Third Country of Issue and Serial Number (upper right hand corner).* Identify the country of issue as either "United States of America" or "U.S.A.". Assign a serial number consisting of the last two digits of the calendar year in which the Forms are prepared followed by a dash and the number "1" for the first set of Forms prepared, "2" for the second, etc. (e.g., 86-1, 86-2, etc.).

(c) *Consignee (Box 2)*. Indentify the name and address of the consignee.

(d) *Marks and reference numbers—Number and nature of packages—Description of product (Box 6)*. Provide sufficient shipping information to identify the consignment to the proper authorities (e.g., bill of lading number, invoice number, etc.). Enter the number and nature of the packaging used (e.g., 100 cases) and describe the wine giving at least the following information:

—for non-appellation U.S. grape table wine, indicate "U.S. Wine";

—for non-appellation U.S. sparkling wine, indicate "U.S. Sparkling Wine";

—for appellation U.S. wine, indicate the country of origin, appellation, vintage date and, if applicable, the varietal designation and whether it is sparkling e.g., "U.S. 1983 Napa Valley Cabernet Sauvignon", "U.S. 1980 New York State Sparkling Wine".

(e) *Quantity (liters/hectoliters/kilograms) (Box 7)*. Select the unit of volume preferred and delete the other two. Identify the total quantity in the consignment using the chosen unit of measure.

(f) *Number of Bottles (Box 8)*. If the consignment is a bottled shipment, specify the number of bottles in the consignment.

(g) *Colour of the product (Box 9)*. Describe the color of the wine in the consignment as being either red, white or rose.

(h) *CERTIFICATE (Box 10)*. Place an "X" in the appropriate square. To determine if the consignment of wine covered by the Forms V.I.1 "has not been subjected to oenological practices which are not permitted under current Community provisions relating to the import of the product in question", refer to Section 4.02 and Attachment II.

6.02 After completing the Forms V.I.1 as specified in Section 6.01, the exporter shall attach to the set of Forms V.I.1 a certification statement as referenced in Attachment III. Attachment III or photocopies thereof may be used for submission of the certfication statement if appropriately completed with original signature.

6.03 The exporter shall forward one 750 mL sample of the wine referenced in the Forms V.I.1 to a chemist, enologist or laboratory certified by ATF for the analysis of wine for export in accordance with ATF Procedure 86-2. The list of ATF-certified chemists, enologists and laboratories are published in the "C" series of the *Official Journal of the European Communities* and may be obtained at the following address:

Certified Laboratories—Wine
National Laboratory Center
Bureau of Alcohol, Tobacco
and Firearms
1401 Research Boulevard
Rockville, Maryland 20850

6.04 The sample shall be accompanied by the original and all four copies of the applicable Forms V.I.1 to which shall be attached the certification statement referenced in Section 6.02.

6.05 Upon receipt of the sample, set of Forms V.I.1 and certification statement from the exporter, the certified chemist, enologist or laboratory, using the techniques described in ATF Procedure 86-2, shall perform the chemical tests specified in Box 11 (with the exception of the test for "density") and complete Box 11, in full, insuring that the precise analytical units of measurement are specified (e.g., total acidity: x g/100 mL calculated as tartaric acid).

6.06 The certified chemist, enologist or laboratory shall then retain one copy of Form V.I.1 and forward the original, the remaining three copies and the certification statement referenced in Section 6.02, to the Regional Director (Compliance), Bureau of Alcohol, Tobacco and Firearms, serving the region in which the exporter is located, Attention: Chief, Technical Services.

6.07 Upon receipt of the duly completed Forms V.I.1, the Regional Director (Compliance) shall complete Box 10 identifying the Bureau address as referenced in Section 7.07. The Regional Director (Compliance) shall then retain one copy of Form V.I.1 as well as the certification statement referenced in Section 6.02 and return the original and two remaining copies of Forms V.I.1 to the exporter.

6.08 The exporter shall retain one copy of Form V.I.1 and forward the original and remaining copy with the consignment.

6.09 The documents to be retained shall be kept on file for five years.

SECTION 7. SIMPLIFIED PROCEDURES FOR PREPARING FORMS V.I.1.

7.01 The procedures outlined in this section apply only to U.S. wine produced by U.S. wineries authorized in accordance with Section 8 and exported by these wineries, on or after April 2, 1986, in labeled containers, of 60 liters or less, fitted with non-reusable closing devices.

7.02 The producer shall complete Forms V.I.1 as indicated in Section 6.01.

7.03 The producer shall include in Box 1 the bonded winery registry number as shown on the "Wine Producer's and Blender's Basic Permit" (ATF F 5120.18) issued to the producer.

7.04 The producer shall then follow the procedure outlined in Section 6.03. The sample shall be accompanied by the original and all four copies of Forms V.I.1.

7.05 Upon receipt of the sample and set of Forms V.I.1 from the producer, the certified chemist, enologist or laboratory, using the techniques described in ATF Procedure 86-2, shall determine only actual alcoholic strength, total acidity and total sulfur dioxide and complete Box 11 only with respect to these analyses, insuring that the precise analytical units of measurement are specified (e.g., total acidity: x g/100 mL calculated as tartaric acid).

7.06 The certified chemist, enologist or laboratory shall leave the other areas of Box 11 blank, retain one copy of Form V.I.1 and forward the original and three remaining copies to the producer.

7.07 With respect to Box 10, a person recognized by ATF as having authority to sign on behalf of the winery shall delete the words "name and title of official", sign under the word "Signature" and insert the place and date of signature in the appropriate areas. In this case, a stamp is not required and the producer shall insert the following in the area headed "Full name and address of the official agency":

Bureau of Alcohol, Tobacco
and Firearms
1200 Pennsylvania Avenue, NW
Washington, DC 20226
U.S.A.

7.08 With respect to Box 11, a person recognized by ATF as having authority to sign on behalf of the winery shall delete the words "name and title of official", sign under the word "Signature" and insert the place and date of signature in the appropriate areas. In this case, neither a stamp nor the name and address of the laboratory is required.

7.09 The producer shall forward one copy of Form V.I.1 to the Regional Director (Compliance), Bureau of Alcohol, Tobacco and Firearms, serving the region in which the producer is located, Attention: Chief, Technical Services.

7.10 The producer shall retain one copy of Form V.I.1 and forward the original and remaining copy with the consignment.

7.11 The documents to be retained shall be kept on file for five years.

SECTION 8. PROCEDURES FOR THE AUTHORIZATION OF U.S. PRODUCERS WISHING TO BE ELIGIBLE TO USE THE PROCEDURES REFERENCED IN SECTION 7.

8.01 U.S. producers shall submit to ATF a certification statement as referenced in Attachment IV. Attachment IV may be used for this purpose provided it has been appropriately completed with original signature. The certification statement shall be mailed to the following address:

Chief, Alcohol Import-Export Branch
Bureau of Alcohol, Tobacco
and Firearms
Attn: Certification Statement (EEC)
P.O. Box 385
Washington, DC 20226

8.02 ATF will submit, to the European Economic Community, the names, addresses and bonded winery registry numbers of the wineries which have submitted the certification statement referenced in Section 8.01 and will identify these wineries as being authorized, until such time as this authorization is withdrawn, to draw up V.I.1 documents in accordance with "Commission Regulation (EEC) No. 3590/85 of December 18, 1985 on the certificate and analysis report required for the importation of wine, grape juice and grape must".

8.03 The EEC will publish the list of authorized wineries in the "C" series of the *Official Journal of the European Communities* and will update the list as needed.

SECTION 9. EFFECT ON OTHER DOCUMENTS.

9.01 The provisions of ATF Procedure 73-6 which dealt with the documentation requirements for U.S. wine exported to the EEC are hereby superseded.

SECTION 10. INQUIRIES.

10.01 Inquiries concerning this procedure should refer to its number and should be addressed to:

Chief, Alcohol Import-Export Branch
Bureau of Alcohol, Tobacco
and Firearms
Attn: Industry Circular 86-2
P.O. Box 385
Washington, DC 20226

COMMISSION REGULATION (EEC) No 3590/85

of 18 December 1985

on the certificate and analysis report required for the importation of wine, grape juice and grape must

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community,

Having regard to Council Regulation (EEC) No 337/79 of 5 February 1979 on the common organization of the market in wine (1), as last amended by Regulation (EEC) No 3307/85 (2), and in particular Articles 50 (5), 51 (2) and 65 thereof,

Having regard to Council Regulation (EEC) No 354/79 of 5 February 1979 laying down general rules for the import of wines, grape juice and grape must (3), as last amended by Regulation (EEC) No 2633/85 (4), and in particular Articles 1 and 1a thereof,

Whereas Regulation (EEC) No 2633/85 amended Regulation (EEC) No 354/79 in order to simplify the administrative procedure relating to imports of wine from certain third countries which have offered special guarantees accepted by the Community; whereas Commission Regulation (EEC) No 2115/76 of 20 August 1976 laying down general rules for the import of wines, grape juice and grape must (5) should be replaced in consequence;

Whereas, in order to facilitate controls by the competent authorities of Member States, the form and, where necessary, the content of the certificate and analysis report provided for and the conditions under which they are to be used should be laid down;

Whereas, in order to prevent fraud, the certificate and, where appropriate, the analysis report relating to each consignment of imported product must be checked; whereas, to this end, the document(s) must accompany each consignment until it is placed under Community control;

Whereas, to take commercial practice into account, the competent authorities must be empowered, where a consignment of wine is split up, to have an extract of the certificate and of the analysis report drawn up under their supervision to accompany each new consignment resulting from the splitting;

Whereas, in accordance with Article 1 (2) of Regulation (EEC) No 354/79, under certain conditions certificates and analysis reports drawn up by duly authorized producers may be accepted as valid by the competent authorities in the Community where the third country in question has offered special guarantees accepted by the Community; whereas, in accordance with the second paragraph of Article 1a of that Regulation, documents comprising simplified analysis reports may be accepted under the same conditions; whereas in order to facilitate the import into the Community of wines originating in certain third countries, such rights should be exercised and the requisite detailed rules of application should be laid down;

Whereas lists containing the names and addresses of the agencies and laboratories authorized in third countries to draw up certificates and analysis reports should be published so that the authorities in the Community which supervise the import of vine products can, where necessary, carry out the requisite checks;

Whereas, in accordance with Article 51 of Regulation (EEC) No 337/79, vine products may be offered for direct human consumption in the Community only on condition that they were produced by means of oenological practices permitted in the Community; whereas, in addition, where an imported product has been subjected to enrichment, acidification or deacidification, provision should be made to ensure that it is authorized for direct human consumption in the Community only where the limits specified for the Community wine-growing zone whose natural production conditions are equivalent to those in the region in which the imported product originates have been complied with;

Whereas the task of the exporters and the authorities should be simplified by providing that a statement that the alcohol added to liqueur wines and wines fortified for distillation is of vinous origin should be included in the V I 1 document without requiring a separate document for this statement; whereas, for the same purpose, it should be provided that the V I 1 document may, if desired, serve as the certificate testifying to the designation of origin required for the importation of wines, eligible for a tariff reduction; whereas, however, 'Boberg' and 'Tokaj' (Aszu and Szamorodni) liqueur wines are exempt from the presentation of a certificate and an analysis report pursuant to Article 2 (3) of Regulation (EEC) No 354/79 provided that a certificate of designation of origin is presented; whereas it should be provided that the V I 1 document may be used to certify the designation of origin of the said liqueur wines and that the section relating to the analysis report need not be completed;

Whereas, in order to avoid difficulties of an administrative nature, transitional measures must be taken;

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(1) OJ No L 54, 5. 3. 1979, p. 1.
(2) OJ No L 320, 29. 11. 1985, p. 1.
(3) OJ No L 54, 5. 3. 1979, p. 97.
(4) OJ No L 251, 20. 9. 1985, p. 3.
(5) OJ No L 237, 28. 8. 1976, p. 1.

Whereas the measures provided for in this Regulation are in accordance with the opinion of the Management Committee for Wine,

HAS ADOPTED THIS REGULATION:

Article 1

This Regulation lays down the conditions to be met by the certificate and analysis report referred to in Article 50 (1) (a) of Regulation (EEC) No 337/79 together with detailed rules for drawing up and utilizing the latter.

Article 2

For the purposes of this Regulation:

(a) 'product' shall mean a product listed in Article 1 (2) (a) and (b) of Regulation (EEC) No 337/79;

(b) 'consignment' shall mean the quantity of a product consigned by one consignor to one consignee;

(c) 'customs territory of the Community' shall mean the territory defined in Article 1 of Council Regulation (EEC) No 2151/84 of 23 July 1984 on the customs territory of the Community (¹);

(d) 'V I 1 document' shall be a document drawn up on a Form V I 1 corresponding to the specimen shown in Annex II, complying with the technical conditions set out in Annex IV and signed by an officer of a recognized official agency and by an official of a recognized laboratory as referred to in Article 7;

(e) 'V I 2 extract' shall be an extract drawn up on a Form V I 2 corresponding to the specimen shown in Annex III, containing the data appearing on a V I 1 document or another V I 2 extract and stamped by a Community customs office.

Article 3

1. For each consignment of a product intended for import into the Community, the certificate and analysis report shall be drawn up on a single Form V I 1.

However, where the product in question is not intended for direct human consumption, the analysis report section of the Form V I 1 need not be completed.

2. Notwithstanding the first subparagraph of paragraph 1, the analysis report section of the Form V I 1 need be completed only in respect of:

— actual alcoholic strength,

— total acidity,

— total sulphur dioxide,

in the case of wine put up in labelled containers of a capacity not exceeding 60 litres, fitted with non-reusable closing devices, provided that the wine originates in a country appearing in Annex I which has offered special guarantees accepted by the Community.

Article 4

1. Forms V I 1 and V I 2 shall comprise a typed or handwritten original and a simultaneously produced copy, in that order. Both the original and the copy shall accompany the product. Forms V I 1 and V I 2 must be completed either in typescript or by hand and in the latter case they shall be completed in ink using block letters. They must contain no erasures or alterations. Changes must be made by striking out the wrong entry and, where necessary, inserting the required details. Any change made in this way must be approved by its author and stamped, as the case may be, by the official agency, the laboratory or the customs authorities.

2. The V I 1 documents and the V I 2 extracts shall bear a serial number allocated, in the case of the V I 1 documents, by the official agency whose officer signs the certificate and, in the case of the V I 2 extracts, by the customs office which stamps them in accordance with Article 6 (2) and (3).

Article 5

1. The V I 1 documents drawn up by wine producers in the third countries listed in Annex I which have offered special guarantees accepted by the Community shall be considered as certificates or analysis reports provided that the producers have received individual approval from the competent authorities of those third countries and are subject to inspection by the latter.

2. Approved producers as referred to in paragraph 1 shall use Form V I 1 giving in box 10 the name and address of the official agency of the third country which approved them. The form shall be filled in correctly.

Producers shall enter in addition:

— in box 1, their names and addresses and their registration numbers in the third countries listed in Annex I,

— in box 11, at least the particulars referred to in Article 3 (2),

and shall sign in the space provided in boxes 10 and 11, after striking out the words 'name and title of the official'. In this case neither stamps nor the name and address of the laboratory shall be required.

Article 6

1. The original and the copy of the V I 1 document or the V I 2 extract shall, on completion of the customs formalities required for putting into free circulation the consignment to which they relate, be handed over to the authorities of the Member State in which such formalities are carried out.

(¹) OJ No L 197, 27. 7. 1984, p. 1.

The authorities shall, where necessary, endorse the back of the V I 1 document or the V I 2 extract. They shall return the original to the person concerned and keep the copy for at least five years.

2. Where a consignment is to be re-consigned complete before entry into free circulation, the new consignor shall give the customs authorities controlling the consignment the V I 1 document or the V I 2 extract relating to that consignment as well as, if appropriate, the Form V I 2 completed consecutively.

The authorities, after verifying that the particulars entered on the V I 1 document agree with those entered on the V I 2 form or that the particulars entered on the V I 2 extract agree with those entered on the V I 2 form established consecutively, shall stamp the latter, which shall then be equivalent to the V I 2 extract, and endorse the document or previous extract accordingly. They shall return the extract and the original of the V I 1 document or the previous V I 2 extract to the new consignor and keep the copy of the document or previous extract for at least five years.

However, a Form V I 2 need not be completed where a consignment of a product is re-exported to a third country.

3. Where a consignment is split before entry into free circulation, the person concerned shall give to the customs authorities controlling the consignment to be split the V I 1 document or the V I 2 extract relating thereto and, in respect of each new consignment, a V I 2 form completed consecutively.

The authorities, after verifying that the particulars entered on the V I 1 document or on the V I 2 extract correspond to those on the V I 2 form completed consecutively for each new consignment, shall stamp the latter, which shall then be equivalent to the V I 2 extract, and endorse accordingly the back of the V I 1 document or the V I 2 extract on which it was based. They shall return the V I 2 extract as well as the V I 1 document or the V I 2 extract previously established to the person concerned and keep a copy of each of these documents for at least five years.

Article 7

1. The Commission shall draw up and update lists containing the names and addresses of the agencies and laboratories, and of the wine producers authorized to draw up V I 1 documents, on the basis of notifications from the competent authorities of third countries. It shall publish these lists in the 'C' series of the *Official Journal of the European Communities.*

2. The notifications from the competent authorities of third countries referred to in paragraph 1 shall contain :

— the names and addresses of the official agencies and laboratories approved or appointed for the purpose of drawing up V I 1 documents,

— the names, addresses and official registration numbers of the wine producers authorized to draw up V I 1 documents.

The list shall contain only competent agencies and laboratories as referred to in the first subparagraph which have been authorized by the competent authorities of the third country concerned to provide the Commission and the Member States, on request, with any information required to evaluate the data appearing on the document.

3. The lists referred to in paragraph 1 shall be updated, in particular in order to take account of changes of address and/or name of agencies or laboratories.

They shall be revised :

(a) where an agency or a laboratory does not provide information requested of it pursuant to paragraph 2 ;

(b) where it becomes necessary to include or delete an official agency or an official laboratory ;

(c) where, after the list has been drawn up, approval as referred to in Article 5 has been given to or withdrawn from a producer.

Article 8

1. Subject to Article 51 of Regulation (EEC) No 337/79 and the provisions adopted for the implementation thereof, products originating in third countries may be offered or delivered for direct human consumption only on condition that they were produced, in the case of the oenological practices referred to in Articles 32, 33 and 34 of Regulation (EEC) No 337/79, in compliance with the limits specified for the Community wine-growing zone in which the natural production conditions are equivalent to those in the production region in which the third country product originates.

The equivalence of production conditions shall be assessed by the competent authorities of the third country concerned.

However, the Commission may replace the assessment by a third country of the equivalence of production conditions in that country, as compared with production conditions in the corresponding wine-growing zone in the Community, by an assessment made by itself on the basis of a comparison of the provisions applicable in the Community with those applicable in the third country.

2. Where the competent authorities of a Member State have the impression that a product originating in a third country has been subjected to an oenological practice as referred to in paragraph 1 and the limits laid down for the

corresponding Community wine-growing zone have been substantially exceeded, the Member State concerned shall inform the Commission thereof without delay. In such cases the Commission shall contact the third country concerned in order to regularize future imports.

Article 9

1. As regards

— liqueur wines, and

— wines fortified for distillation,

the V I 1 documents shall be recognized as valid only where the official agency as referred to in Article 7

(a) has entered the following in box 15:

'the alcohol added to this wine is certified as being of vinous origin';

(b) and has completed this with:

— the full name and address of the issuing agency,

— the signature of an official of the agency,

— the agency's stamp.

2. For wines eligible for a tariff reduction on importation into the Community, the V I 1 documents may serve as a certificate testifying to the designation of origin which is entitled to such arrangements, where the official agency

— has entered the following in box 15:

'the wine referred to in this document is certified as having been produced in the ... wine-growing region and it was given the designation of origin shown in box 6 in accordance with the provisions of the country of origin',

and

— has completed this as provided for in paragraph 1 (b).

3. For liqueur wines entitled to the appellation 'Boberg' and 'Tokaj' (Aszu and Szamarodni) box 15 of the V I 1 document may be used to provide the attestation pursuant to Article 3 (2) of Regulation (EEC) No 354/79 and to Commission Regulation (EEC) No 1120/75 [1]; in this case it shall not be necessary to complete box No 11 of the same document relating to the analysis report.

Article 10

The third countries for which the requirement to submit the certificate and analysis report has been waived in accordance with Article 2 (2) of Regulation (EEC) No 354/79, for their exports to the Community, shall be those listed in Annex V to this Regulation.

Article 11

Regulation (EEC) No 2115/76 is hereby repealed on 30 September 1986. During the period 2 April to 30 September 1986, that Regulation shall apply only to products shown to the satisfaction of the Community customs authorities to have left the third country concerned before 2 April 1986.

Article 12

This Regulation shall enter into force on the third day following that of its publication in the *Official Journal of the European Communities*. It shall apply, subject to Article 11, from 2 April 1986, except for Article 9 (2) which shall apply from 1 July 1986.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels, 18 December 1985.

For the Commission

Frans ANDRIESSEN

Vice-President

ANNEX I

List of the third countries which have provided the Community with the special guarantees referred to in Article 3 (2) and Article 5:

the United States of America

ANNEX II

THIRD COUNTRY OF ISSUE:

VI1

Serial No:

DOCUMENT
FOR THE IMPORTATION OF WINE, GRAPE JUICE
OR GRAPE MUST INTO
THE EUROPEAN COMMUNITY

1. Exporter ☐

2. Consignee

3. CUSTOMS' STAMP(1)

4. Means of transport(1)

5. Place of unloading(1)

(1) Obligatory only for wines benefitting from a reduced customs tariff
(2) Delete as appropriate
(3) Put an 'x' in the appropriate place

6. Marks and reference numbers — Number and nature of packages — Description of product

7. Quantity in l/hl/kg(2)

8. Number of bottles

9. Colour of product

10. CERTIFICATE

The product described above (3) ☐ is ☐ is not intended for direct human consumption, complies with the conditions governing production and entry into circulation applying in the country of origin of the product and, if intended for direct human consumption, has not been subjected to oenological practices which are not permitted under current Community provisions relating to the import of the product in question.

Full name and address of the official agency:

Place and date:

Signature, name and title of official:

Stamp:

11. ANALYSIS REPORT

describing the analytical characteristics of the product described above
FOR GRAPE MUST AND GRAPE JUICE: density:
FOR WINE AND GRAPE MUST STILL IN FERMENTATION:
total alcoholic strength:
actual alcoholic strength:
FOR ALL PRODUCTS:
total dry extract:
total acidity:
volatile acidity:
citric acidity:
total sulphur dioxide:

(3) ☐ presence ☐ absence of products obtained from varieties resulting from interspecific crossings (direct producer hybrids) or from other varieties not of the species *Vitis vinifera*.

Full name and address of the laboratory:

Place and date:

Signature, name and title of official:

Stamp

IMPORTS (Entry into free circulation or issue of extracts)

Quantity	12. Reference number and date of the extract or customs document	13. Full name and address of the consignee (extract)	14 Stamp of the competent authority
Available			
Attributed			
Available			
Attributed			
Available			
Attributed			
Available			
Attributed			

15. Other information:

ANNEX III

EUROPEAN COMMUNITY

MEMBER STATE OF ISSUE:

VI2 **Serial No:**

EXTRACT OF A DOCUMENT FOR THE IMPORTATION OF WINE, GRAPE JUICE OR GRAPE MUST INTO THE EUROPEAN COMMUNITY

1. Consignor
☐

2. Consignee

3. Extract of V.I.1 document

No:

issued by (name of third country)

on:

4. Extract of V.I.2. extract

No:

stamped by (full name and address of the customs office within the Community)

on:

5. Marks and reference numbers — Number and nature of packages — Description of product

6. Quantity in l/hl/kg(1)

7. Number of bottles

8. Colour of product

9. CONSIGNOR'S DECLARATION (2)

☐ The V.I.1 document referred to in box 3 ☐ The extract referred to in box 4 was completed in respect of the product described above and comprises:

☐ A CERTIFICATE to the effect that the product described above ☐ is ☐ is not intended for direct human consumption, complies with the conditions governing production and entry into circulation applying in the country of origin of the product and, if intended for direct human consumption, has not been subjected to oenological practices which are not permitted under current Community provisions relating to the import of the product in question.

☐ AN ANALYSIS REPORT showing that this product has the following analytical characteristics:

FOR GRAPE MUST AND GRAPE JUICE: density:

FOR GRAPE AND GRAPE MUST STILL IN FERMENTATION:

total alcoholic strength: actual alcoholic strength:

FOR ALL PRODUCTS:

total dry extract: total acidity: volatile acidity:

citric acidity: total sulphur dioxide:

☐ presence ☐ absence of products obtained from varieties resulting from interspecific crossings (direct producer hybrids) or from other varieties not of the species *Vitis vinifera*,

☐ as well as (3) an ENDORSEMENT from the competent official agency certifying that:

- the wine which is the subject of this document was produced in the region of .... and is recognized, according to the rules in the country of origin, as having the right to the designation of origin mentioned in box 5
- the alcohol added to the wine which is the subject of the present document is of vinous origin.

Signature:

Full name and address of customs office concerned:

10. CUSTOMS STAMP

Declaration certified true

Place and date:

Signature: Stamp:

(1) Delete as appropriate
(2) Put an 'x' in the appropriate place
(3) Obligatory only for wines benefiting for a reduced customs tariff, for liqueur wines and for wines fortified for distillation (delete as appropriate)

IMPORTS (Entry into free circulation or issue of extracts)

Quantity	11. Reference number and date of the extract or customs document	12. Full name and address of the consignee (extract)	13. Stamp of the competent authority
Available			
Attributed			
Available			
Attributed			
Available			
Attributed			
Available			
Attributed			

ANNEX IV

(TECHNICAL) CONDITIONS RELATING TO FORMS V I 1 AND V I 2

A. Printing of forms

1. The size of the forms is to be approximately 210 × 297 mm.
2. White paper dressed for writing purposes weighing not less than 40 g/m² must be used.
3. Each form must bear the name and address or the mark of the printer.
4. The forms are to be printed in one of the official Community languages; the language for the forms V I 2 will be specified by the competent authorities of the Member State in which the forms will be stamped.

B. Instructions for completing the forms

1. The forms must be completed in the language in which they are printed.
2. Each form must bear a serial number allocated:
   - — in the case of the forms V I 1, by the official agency which signs the 'Certificate' section,
   - — in the case of the forms V I 2, by the customs office which stamps them.
3. The description of the product in box 6 of the V I 1 form and in box 5 of the V I 2 extract must be completed in accordance with Article 35 of Council Regulation (EEC) No 355/79 (1), as last amended by Regulation (EEC) No 1898/85 (2).

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(1) OJ No L 54, 5. 3. 1979, p. 99.
(2) OJ No L 179, 11. 7. 1985, p. 1.

ANNEX V

- — Canada
- — Iran
- — Lebanon
- — People's Republic of China
- — Taiwan

ATTACHMENT II

COUNCIL REGULATION (EEC) No 1873/84

of 28 June 1984

authorizing the offer or disposal for direct human consumption of certain imported wines which may have undergone oenological processes not provided for in Regulation (EEC) No 337/79

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community,

Having regard to Council Regulation (EEC) No 337/79 of 5 February 1979 on the common organization of the market in wine (1), as last amended by Regulation (EEC) No 1208/84 (2), and in particular Article 51 (1) thereof,

Having regard to the proposal from the Commission,

Whereas Article 50 (1) (a) of Regulation (EEC) No 337/79 lays down that the products referred to in Article 1 (2) (a) and (b) of that Regulation may be imported only if they are accompanied by a certificate attesting that they comply with the provisions governing production, marketing and, should such be the case, supply for direct human consumption in the third countries in which they originate;

Whereas Article 51 (1) of Regulation (EEC) No 337/79 lays down that products imported from third countries and falling within heading No 22.05 of the Common Customs Tariff which have undergone oenological practices not allowed by Community rules, or which do not conform either to the provisions of that Regulation or to those adopted in implementation thereof, may not, except by way of derogation, be offered or disposed of for direct human consumption;

Whereas Article 2 (2) of Council Regulation (EEC) No 354/79 of 5 February 1979 laying down general rules for the import of wines, grape juice and grape must (3), as last amended by the 1979 Act of Accession, exempts from the requirement to present the abovementioned certificate imports of wine originating in and coming from third countries whose annual exports to the Community are less than 1 000 hl; whereas, in view of the current level of exports of United States wines to the Community, an arrangement should be introduced which is more appropriate to the situation;

Whereas, with the aim of fostering the harmonious development of trade in wine products between the Community and the United States of America, and in view of the effectiveness of the control system in force in the United States and the particular extent to which compliance with provisions governing the production, marketing and disposal of wine for direct human consumption is thereby ensured, the import into the Community of United States wines which have undergone certain oenological processes not provided for by Community rules should be authorized if, in the present state of scientific knowledge, those processes have been shown to be identical or almost equivalent to oenological processes permitted in the Community; whereas other oenological processes in use in the United States which are not permitted in the Community necessitate further scientific research; whereas, therefore, authorization for the import into the Community of United States wines which have undergone such processes should be limited to a certain period; whereas, however, it should be made clear that such authorization may be reviewed at any time, after consultation with the United States authorities, in particular were it to be found that the use of certain oenological practices could present a public health risk;

Whereas, in a letter sent to the Government of the United States of America on 6 July 1983, the Community, represented by the Commission, expressed the intention of modifying Community provisions in respect of oenological processes with a view to encouraging trade in the wine sector; whereas the necessary provisions should therefore be incorporated in Community legislation in order to put those modifications into effect;

Whereas the Government of the United States of America undertook in its letter dated 26 July 1983 to delete from the American provisions a large number of substances whose use has hitherto been permitted in the manufacture of wine, and to replace expressions having little meaning in such provisions with scientific terms, thus making identification easier; whereas the Government of the United States of America further undertook to ensure that geographical names referring to a Community wine-growing area were no longer used as generic names unless such use was traditional; whereas the Government of the United States of America also undertook to work in constant collaboration with the Community with the object of expanding scientific knowledge on certain oenological processes referred to in 1 (b) of the Annex to this Regulation; whereas, moreover, the United States Government recognized the need to establish collaboration between on the one hand, the competent authorities in the Member States, coordinated if necessary by the Commission, and on the other hand, the competent American authorities in order to facilitate the prevention of fraud; whereas these commitments should, therefore, be respected and provision should be made for certain derogatioins from Article 51 (1) of Regulation (EEC) No 337/79,

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(1) OJ No L 54, 5. 3. 1979, p. 1.
(2) OJ No L 115, 1. 5. 1984, p. 77.
(3) OJ No L 54, 5. 3. 1979, p. 97.

HAS ADOPTED THIS REGULATION:

Article 1

1. By way of derogation from Article 51 (1) of Regulation (EEC) No 337/79, it shall be permitted to offer or dispose of for direct human consumption in the Community products falling withing heading No 22.05 of the Common Customs Tariff and derived from grapes harvested and vinified on the territory of the United States of America for which, in accordance with United States provisions, one or more of the oenological processes listed in 1 (a) and (b) of the Annex to this Regulation may have been used during manufacturing or storage operations.

However, this authorization shall only be valid, as regards use of the oenological processes listed in 1 (b) of the Annex, until 26 July 1988.

2. Member States may not prohibit the offer or supply for direct human consumption of wine derived from grapes harvested and vinified on the territory of the United States of America in accordance with the provisions in force in that country on the grounds that one or more of the oenological processes listed in 2 (a) and (b) of the Annex may have been used.

3. Wines derived from grapes harvested and vinified on the territory of the United States of America which have been the subject of the addition of sugar in aqueous solution may not be offered or disposed of for direct human consumption in the Community.

Article 2

Producer Member States shall forward to the Government of the United States of America the list of their protected geographical designations of wines in the Community which they wish to see protected by the United States in accordance with the commitment entered into by that country.

Article 3

The Commission shall ensure the publication in the *Official Journal of the European Communities*, 'C' series, of the value limits laid down by the provisions of the United States of America for the use of the substances listed in the Annex to this Regulation. It shall keep such publication up to date if changes are made to the American provisions.

Article 4

This Regulation shall enter into force on the third day following its publication in the *Official Journal of the European Communities*.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Luxembourg, 28 June 1984.

For the Council
The President
H. BOUCHARDEAU

ANNEX

1. Oenological processes permitted

(a) *without any time limit:*

- catalase derived from *Aspergillus niger*,
- glucose oxydase derived from *Aspergillus niger*,
- ferrous sulphate,
- oxygen,
- soya flour;

(b) *until 26 July 1988 at the latest:*

- dimethylpolysiloxane,
- polyoxyethylene-40-monostearate,
- sodium carboxymethylcellulose,
- sorbitan monostearate,
- calcium sulphate,
- substances composed of potassium ferrocyanide and aqueous ferrous sulphate, possibly combined with copper sulphate and active carbon,
- fumaric acid,
- ion-exchange resins,
- lactic acid,
- malic acid,
- polyvinylpolypyrrolidone (PVPP),
- polyvinylpyrrolidone (PVP).

2. Oenological processes which are identical to, or comparable with, those permitted in the Community

(a) *oenological processes which are identical:*

- acacia (gum arabic),
- activated carbon,
- animal albumen (including egg white powder and egg white solution),
- ammonium phosphate (dibasic),
- ascorbic acid,
- bentonite (Wyoming clay),
- bentonite slurry,
- carbon dioxide,
- casein,
- citric acid,
- compressed air (aeration),
- copper sulphate,
- diatomaceous earth,
- enzymes: pectolytic, derived from *Aspergillus niger*,
- gelatin,
- gelatin slurry,
- isinglass,
- nitrogen gas,
- potassium bitartrate,
- potassium caseinate,
- potassium metabisulfite,
- potassium sorbate,
- silica gel (colloidal silicon dioxide—30%,
- sorbic acid,
- tannin,
- tartaric acid,
- Calcium carbonate, possibly containing small quantities of double calcium salt of tartaric L (+) and malic L (—) acid,

(b) *oenological processes which are comparable:*

- *Agar agar*,
- ammonium carbonate,
- ammonium phosphate (monobasic).
- granular cork,
- milk powder,
- oak chips sawdust, uncharred and not treated,
- potassium carbonate,
- carageenan,
- cellulase derived from *Aspergillus niger*,
- cellulose,
- autolyzer yeast.

ATTACHMENT III

It is hereby certified that the consignment of wine referenced on Forms V.I.1, identified by Serial No. ______________:

(a) has been produced by [1] ______________________________
____
____
______________________________;

(b) will be exported by [2] ______________________________
____
____
______________________________;

(c) complies with United States rules of production; and,

(d) has not been subjected to enological practices which are not permitted under current EEC provisions relating to the import of the product in question.

It is further certified that the above referenced Forms V.I.1 have been completed in accordance with ATF Procedure 86-1 and any subsequent amendments relating to the requirements thereof.

I, the undersigned, as the duly authorized representative of the above named exporter, certify the statements herein to be true and, furthermore, consent:

- upon request, to provide the Bureau of Alcohol, Tobacco and Firearms any information required to evaluate the data included on the above referenced Forms V.I.1; and,

- to the disclosure by the Bureau of Alcohol, Tobacco and Firearms to the governing bodies of the European Economic Community and its Member States of any information which would have a material bearing on the representations made by this certificate.

____
Signature of Duly Authorized
Representative of Above Named Exporter

____
Date of signature

____
Typed Name and Title of Above Representative

---

[1] Insert name, address and bonded winery registry number of producer as shown on "Wine Producer's and Blender's Basic Permit" (ATF F 5120.18).

[2] Insert name, address and basic permit number of exporter as shown on "Wholesaler's Basic Permit" (ATF F 5170.3).

ATTACHMENT IV

It is hereby certified that wine produced by

[1] ____________________________________

____

____

which is exported from the U.S. to the European Economic Community (EEC) by the above named producer on or after April 2, 1986:

(a) complies with United States rules of production;

(b) has not been subjected to enological practices which are not permitted under current EEC provisions relating to the import of the product in question; and,

(c) will be accompanied by Forms V.I.1 completed in accordance with ATF Procedure 86-1 and any subsequent amendments relating to the requirements thereof.

I, the undersigned, as the duly authorized representative of the above named exporter, certify the statements herein to be true and, furthermore, consent:

- upon request, to provide the Bureau of Alcohol, Tobacco and Firearms any information required to evaluate the data included on the above referenced Forms V.I.1; and,

- to the disclosure by the Bureau of Alcohol, Tobacco and Firearms to the governing bodies of the European Economic Community and its Member States of any information which would have a material bearing on the representations made by this certificate.

______________________________ Signature of Duly Authorized Representative of Above Named Winery

______________________________ Date of signature

______________________________ Typed Name and Title of Above Representative

---

[1] Insert name, address and bonded winery registry number as shown on "Wine Producer's and Blender's Basic Permit" (ATF F 5120.18).

CERTIFICATION OF CHEMISTS, ENOLOGISTS AND LABORATORIES FOR THE ANALYSIS OF WINE FOR EXPORT

ATF Proc. 86-2

SECTION 1. PURPOSE.

1.01 This procedure establishes the guidelines to be followed by chemists, enologists or laboratories desiring to be certified by the Bureau of Alcohol, Tobacco and Firearms (ATF) for the analysis of wine for export.

SECTION 2. BACKGROUND.

2.01 Many countries require the presentation of specific chemical analyses as a condition of entry for imported wine. With respect to U.S. wine, many of these countries will accept analyses performed by persons or laboratories certified by ATF.

2.02 The Member States of the European Economic Community (hereinafter referred to as the EEC or the Community) are among such countries, and ATF Procedure 73-6 which dealt with EEC documentation requirements for wine, established the procedures to be followed by chemists and laboratories wishing to be certified to analyze wine for export to the EEC.

2.03 The Japanese Ministry of Health and Welfare now also accepts chemical analyses performed by ATF-certified persons or laboratories, and the number of such foreign governmental bodies may increase in the future.

2.04 This being the case, the provisions relative to certification of chemists and laboratories previously included in ATF Procedure 73-6 have been dissociated from EEC documentation requirements and are reissued herewith to make it clear that those certified for wine analysis by ATF are authorized to analyze wine exported not only to the European Economic Community but also to Japan and any other countries which have agreed to accept chemical analyses performed by ATF certified persons or laboratories. In this connection, it should be noted that, although ATF Procedure 73-6 identified only graduate chemists and laboratories under the direction of a graduate chemist as being eligible for certification, the new procedure expands eligibility to include graduate enologists and laboratories under the direction of a graduate enologist. ATF has concluded that the educational background of graduate enologists warrants such recognition.

SECTION 3. APPLICATION FOR CERTIFICATION.

3.01 Application for certification that a chemist, enologist or laboratory is qualified to analyze wine for export may be filed by a graduate chemist, a graduate enologist, a laboratory under the direction of a graduate chemist or graduate enologist, or an exporter on behalf of such a chemist, enologist or laboratory.

3.02 The application shall be submitted, in duplicate, on the applicant's letterhead, to the Director, National Laboratory Center, Bureau of Alcohol, Tobacco and Firearms, at the address given in Section 7.01. It shall be accompanied by the analysis reports referenced in Section 4.01(b) and by documentation supporting the educational qualifications and professional experience of the chemist or enologist. This information is subject to verification.

SECTION 4. QUALIFICATION FOR CERTIFICATION.

4.01 To qualify for certification by the Director, ATF National Laboratory Center, the applicant shall:

(a) have access to such laboratory equipment and facilities as are necessary to perform the wine analyses described in following subparagraph (b). The adequacy of such equipment and facilities is subject to verification or inspection;

(b) submit to the Director, ATF National Laboratory Center, a report of the analysis of any sample of white wine and any sample of red wine together with one 750 mL sample of each wine to be analyzed. These reports shall include the following analytical data as determined in accordance with the latest edition of the *Methods of Analysis*, published by the Association of Official Analytical Chemists:

(1) Specific gravity;
(2) Alcohol by volume;
(3) Total extract;
(4) Reducing sugar;
(5) Sucrose;
(6) Ash;
(7) Alkalinity of ash;
(8) Total acidity;
(9) Volatile acidity;
(10) Fixed acidity;
(11) Tartaric acid;
(12) Citric acid;
(13) Sulfur dioxide
(14) pH

SECTION 5. CERTIFICATION OF APPLICANTS.

5.01 If U.S. Government chemists verify the reports of analyses submitted by the applicant, and the other requirements have been met, the Director, ATF National Laboratory Center, will certify the chemist, enologist or laboratory and so notify the applicant. If the chemist, enologist or laboratory does not meet the requirements for certification, the applicant will be so notified.

SECTION 6. EFFECT ON OTHER DOCUMENTS.

6.01 The provisions of ATF Procedure 73-6 which set out the requirements to be met by chemists or laboratories wishing to be certified by the Bureau of Alcohol, Tobacco and Firearms (ATF) for the analysis of wine for export are hereby superseded.

SECTION 7. INQUIRIES.

7.01 Inquiries concerning this circular, including requests for the listing of chemists, enologists and laboratories certified by ATF for the analysis of wine for export, should refer to its number and should be addressed to:

National Laboratory Center
Bureau of Alcohol, Tobacco
and Firearms
Certified Laboratiories—Wine
1401 Research Boulevard
Rockville, Maryland 20580

IV

Legislation

Subpart A — Currently Enacted Legislation

Public Law 99-107*
H. R. 3452
99th Congress
Approved: September 30, 1985

45-DAY EXTENSION OF INCREASE IN TAX ON CIGARETTES

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled.

SECTION 1. SHORT TITLE.

This Act may be cited as the "Emergency Extension Act of 1985".

SEC. 2. 45-DAY EXTENSION OF INCREASE IN TAX ON CIGARETTES.

Subsection (c) of section 283 of the Tax Equity and Fiscal Responsibility Act of 1982 (relating to increase in tax on cigarettes) is amended by striking out "October 1, 1985" and inserting in lieu thereof "November 15, 1985".

* * * * *

Public Law 99-155*
H. R. 3721
99th Congress
Approved: November 14, 1985

EXTENSION OF INCREASE IN TAX ON CIGARETTES

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

* * * * *

SEC. 2. (a) Subsection (c) of section 283 of the Tax Equity and Fiscal Responsibility Act of 1982 (relating to increase in tax on cigarettes) is amended by striking out "November 15, 1985" and inserting in lieu thereof "December 15, 1985".

* * * * *

Public Law 99-181*
H.R. 3918
99th Congress
Approved: December 13, 1985

EXTENSION OF INCREASE IN TAX ON CIGARETTES

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

* * * * *

SECTION 1. EXTENSION OF INCREASE IN TAX ON CIGARETTES.

Subsection (c) of section 283 of the Tax Equity and Fiscal Responsibility Act of 1982 (relating to increase in tax on cigarettes) is amended by striking out "December 15, 1985" and inserting in lieu thereof "December 19, 1985".

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* No Committee Reports

Public Law 99-189*
H. R. 3981
99th Congress
Approved: December 18, 1985

EXTENSION OF INCREASE IN TAX ON CIGARETTES

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. EXTENSION OF INCREASE IN TAX ON CIGARETTES.

Subsection (c) of section 283 of the Tax Equity and Fiscal Responsibility Act of 1982 (relating to increase in tax on cigarettes) is amended by striking out "December 19, 1985" and inserting in lieu thereof "December 20, 1985".

* * * * *

Public Law 99-201 *
H. R. 4006
99th Congress
Approved: December 23, 1985

EXTENSION OF INCREASE IN TAX ON CIGARETTES

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. EXTENSION OF INCREASE IN TAX ON CIGARETTES.

Subsection (c) of section 283 of the Tax Equity and Fiscal Responsibility Act of 1982 (relating to increase in tax on cigarettes) is amended by striking out "December 20, 1985" and inserting in lieu thereof "March 15, 1986".

* * * * *

SEC. 3. EFFECTIVE DATE.

The amendments made by this Act shall take effect on December 19, 1985. As an exercise of authority under the commerce, taxation, and other powers under the Constitution, the amendment made by section 1 shall be treated for purposes of all Federal and State laws as enacted on December 19, 1985.

* * * * *

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* No Committee Reports

V

Administrative Matters

Subpart A — Administrative and Procedural Practice Regulations

Dollar Limitation for Display and Retail Advertising Specialities

Notice No. 582

ACTION: General notice.

SUMMARY: This notice sets forth the annually updated dollar limitations prescribed for industry members in 27 CFR Part 6, as established by the use of a "cost adjustment factor" in accordance with 27 CFR 6.82. Industry members who wish to furnish, give, rent, loan or sell product display or retailer advertising specialties to retailers are subject to dollar limitations (27 CFR 6.83, 6.85). Industry members making payments for advertisements in programs or brochures issued by retailers associations at a convention or trade show are also subject to dollar limitations (27 CFR 6.100). The cost adjustment factor is defined as a percentage equal to the change in the Bureau of Labor Statistics' consumer price index. Adjusted dollar limitations are established each January using the consumer price index for the preceding December.

Based on data of the Bureau of Labor Statistics, the consumer price index was 3.8 percent higher in December 1985 than in December 1984. Therefore, effective January 1, 1986, the dollar limitation for "Product Displays" (27 CFR 6.83(c)) should be increased from $122.00 to $127.00 per brand. Similarly, the "Retailer Advertising Specialities" (27 CFR 6.85(b)) should be increased from $60.00 to $62.00 per brand. Also, the "Participation in Retail Association Activities" (27 CFR 6.100(e)) should be increased from $122.00 to $127.00 per year.

EFFECTIVE DATE: This notice shall be effective as of January 1, 1986.

FOR FURTHER INFORMATION CONTACT: Norbert Hymel, Tax and Trade Compliance Branch, 1200 Pennsylvania Ave., NW, Washington, DC 20226, (202) 566-7715.

Signed: January 31, 1986.

Stephen E. Higgins,
Director.

(Filed by the Office of the Federal Register on February 10, 1986 8:45 am and published in the Federal Register for February 11, 1986 51 F.R. 5139)

Appellations of Origin and Geographic Corporate and Trade Names

27 CFR Part 4

Notice No. 576

ACTION: General statement of policy.

SUMMARY: This document relates to regulations governing the use of appellations of origin and geographic corporate and trade names on labels for wine. It arises from the decision in *Wawszkiewicz v. Department of the Treasury,* 480 F.Supp. 739 (D.D.C. 1979). *aff'd in part, rev'd in part,* 670 F.2d 296 (D.C. Cir 1981). The Court of Appeals remanded the case to the lower court with instructions that these regulations (among others) be remanded to ATF for reconsideration and review. ATF has reconsidered and reviewed these regulations and concludes that they do not need to be amended. Definitions of various winemaking terms used on labels of wine, a separate issue involved in the litigation cited above, will be handled separately.

DATE: Policy statement issued on December 20, 1985.

FOR FURTHER INFORMATION CONTACT: John A. Linthicum or James P. Ficaretta, FAA, Wine and Beer Branch, Bureau of Alcohol, Tobacco and Firearms, (202) 566-7626.

SUPPLEMENTARY INFORMATION:

Background

On August 23, 1978, ATF issued a final rule, Treasury Decision ATF-53 (43 FR 37672, 54624), which revised various regulations governing the labeling of wine. T.D. ATF-53 provided, in part, that wine may be labeled with an appellation of origin if at least 75 percent of the wine is derived from fruit or other agricultural products grown in the appellation area indicated. In the same final rule, ATF also decided not to amend regulations governing the use of geographic corporate and trade names.

The plaintiffs in *Wawszkiewicz* challenged regulations governing the use of appellations of origin and geographic corporate and trade names, among other regulations. They argued that when the grapes used to make a wine are not 100 percent from the stated appellation of origin, the label is misleading unless the percentages from each appellation of origin are shown on the label. Additionally, they argued that the rules governing the use of geographic corporate and trade names sanctioned misleading labeling.

District Court

The District Court decision dwelt primarily on the varietal labeling rule. In summarizing, the court held that similar shortcomings applied to the other contested rules: appellation of origin percentages, geographic brand names, geographic corporate and trade names, and the use of winemaking terminology on labels. The court held that the use of a grape variety name, or an appellation or origin, implied that 100 percent of the wine was derived from grapes known by that name (in the case of a wine named for a grape variety name), or from grapes grown in the named area (in the case of a wine claiming an appellation of origin). 480 F. Supp. at 743.

The court concluded that the same rationale requires that wine labels making representations as to geographic origin (*i.e.* geographic brand names and geographic corporate and trade names) should couple such representations with a more precise indication of what minimum precentages attach to the claims made. *id.* at 745.

The District Court ordered that the regulations be remanded to ATF for revision consistent with the conclusion described above.

Court of Appeals

The Court of Appeals disagreed with the District Court's rationale in that a court reviewing agency action is not empowered to substitute its judgment for that of the agency. The Court of Appeals held that an agency's decision should be upheld where there is a rational basis for the decision in the facts of the record. 670 F.2d at 301. Pursuant to this test, the court upheld the regulations governing varietal labeling but found that the regulations concerning statements as to geographic origin and winemaking terminology had not been adequately explained, "either by reference to the record or by a reasoned statement." *id.* at 304. The Court of Appeals remanded the case to the District Court with instructions that the regulations governing statements as to geographic origin [appellation of origin percentages, geographic brand names, geographic corporate and trade names] and winemaking terminology be remanded to ATF for review and reconsideration in light of the appellate court's decision. No specific instructions were provided by either court nor were any dates set in connection with the review or reconsideration.

New Rulemaking Projects

The issuance of this general statement of policy allows ATF to explain its decision on appellations of origin percentages and geographic corporate and trade names, by reference to the record and by reasoned statement.

In previously published notices of proposed rulemaking, ATF has proposed revisions of the geographic brand names regulation, Notice Nos. 522, 534, and 542 (49 FR 19330, 28417, and 34847).

Definitions of various winemaking terms which are indicative of specific processes used in the production of wine will be handled separately.

Reconsideration and Review

Appellation of Origin. One of the areas of contention in the *Wawszkiewicz* litigation was the qualifying requirement for use of an appellation of origin. In general, at least 75 percent of the wine must be derived from fruit or other agricultural products grown in the area indicated by the appellation of origin. (27 CFR 4.25a).

The 75 percent requirement was not, and is not, an arbitrary figure. In 1935, ATF's predecessor agency, the Federal Alcohol Administration, proposed regulations on the use of appellations of origin on wine labels. The proposed rule would have required that 100 percent of the volume of the wine be derived from grapes grown and fermented in the area indicated by the appellation of origin. Careful consideration was given to the concept of geographical descriptions of the origin of wines.

At the hearing in November 1935, testimony was presented indicating that the distinctive geographic characteristics of grapes would be preserved by permitting a wine to be labeled with an appellation of origin when 75 percent of the volume of the wine is derived from grapes grown in the area named. The 75 percent rule would also allow for necessary blending. Thus, the 75 percent requirement is basically unchanged since the repeal of Prohibition.

When the minimum qualifying percentage requirement is met for an appellation of origin, no percentages are required to appear on the label. However, when a multi-county or multistate appellation of origin is used, all of the grapes used to produce the wine must come from the indicated areas.

Since different viticultural characteristics may be associated with different areas when a multi-county or multistate appellation of origin is used, the percentage of the volume of the wine from each area must be shown on the label. (27 CFR 4.25a (c) and (d)).

Having re-examined this question, ATF believes that the current regulations protect the geographic characteristics. ATF believes that the consumer is protected and adequately informed. No new facts or materials have been presented which would warrant a regulatory change.

Geographic Corporate and Trade Names. The name of the bottler or packer of the wine and the place where bottled or packed (city and State) must appear on labels of wine preceded by the legend "bottled (packed) by." (27 CFR 4.35). Although the corporate or trade name of the winemaker or bottler may be geographic in nature, it must be approved by ATF before it may appear on labels of wine. ATF does not approve names which are considered to be misleading.

The name of the bottler appears in direct conjunction with the city and State, *i.e.* no other information may appear between the corporate or trade name and the actual location of the bottling or packing. ATF believes that the appearance of the city and State in direct conjunction with a geographic corporate or trade name precludes any misleading impressions about the origin of the wine.

However, a geographic brand name does not appear in direct conjunction with the city and State where the wine was bottled or packed. Therefore, a different rule is necessary in the case of a geographic brand name. (27 CFR 4.39(i)). This regulation is under review in a separate rulemaking project, as discussed above.

The Court of Appeals states that the Bureau never explained why it chose to regulate misleading geographic brand names but not equally deceptive geographic corporate or trade names. 670 F.2d at 304. The reason is implicit in the regulation requiring that a geographic corporate or trade name appear in direct conjunction with the city and State where the wine was bottled or packed. Because the corporate or trade name appears in direct conjunction with the address of bottling or packing, a geographic corporate or trade name is not misleading in comparision to a geographic brand name. This point was never made clear during the litigation.

ATF believes that the usage of geographic corporate and trade names is sufficiently regulated to prevent the conveyance of any misleading impressions to consumers. The regulations governing geographic corporate and trade names have remained virtually unchanged since 1935. No facts or materials have been submitted to ATF which would warrant amending the present regulation.

Summary

ATF believes that the existing regulations on appellations of origin and geographic corporate and trade names are valid because they were established in public rulemaking projects, with the proposed rules modified in response to public comments. Since these regulations adequately provide the consumer with sufficient information on the origin of wines, ATF does not intend to amend these regulations.

List of Subjects in 27 CFR Part 4

Advertising, Consumer protection, Customs duties and inspection. Imports, Labeling, Packaging and containers, Wine.

Drafting Information

The principal author of this document is John A. Linthicum of the FAA,

Authority

This notice is issued under the authority contained in section 5 of the Federal Alcohol Administration Act, 49 Stat. 981, as amended, 27 U.S.C. 205.

Signed: November 12, 1985.

Stephen E. Higgins,
Director.

Approved: November 18, 1985.

David D. Queen,
Acting Assistant Secretary
(Enforcement and Operations).

(Filed by the Office of the Federal Register on December 19, 1985 8:45 am and published in the Federal Register for December 20, 1985 50 F.R. 5/85)

[illegible]

[illegible]

VI

Announcements

Announcement 86-1

Major Disaster Areas Proclaimed by the President

The President has determined that certain areas of the United States were adversely affected by disasters of sufficient magnitude to warrant Federal assistance under the Disaster Relief Act of 1974. The specific areas adversely affected as identified by the Administrator, Federal Emergency Management Agency (FEMA) are listed below.

Persons in the affected areas holding for sale alcoholic beverages, cigars, cigarettes, or cigarette papers or tubes, which were lost, rendered unmarketable, or condemned by a duly authorized official by reason of these disasters may be paid an amount equal to the internal revenue taxes and customs duties paid on such products, as provided in 26 U.S.C. 5064 and 5708. Claims for such payments should be filed with the Regional Director (Compliance), Bureau of Alcohol, Tobacco and Firearms, for the ATF region in which the alcoholic beverages, cigarettes, etc., were held for sale. Claims may be allowed only if filed within six months after the date the FEMA identifies the specific disaster area.

CALIFORNIA—Declared February 21, 1986
Type of Disaster: severe storms, landslides, mudslides and flooding beginning on or about February 12, 1986
COUNTIES: Alpine, Amador, Butte, Calaveras, Calusa, Del Norte, El Dorado, Fresno, Glenn, Humboldt, Lake, Lassen, Madera, Marin, Mendocino, Modoc, Napa, Sacramento, San Mateo, Santa Clara, Santa Cruz, Sierra, Solano, Sonoma, Sutter, Tehama, Tuolumne, Yolo, Yuba

FLORIDA—Declared December 3, 1985
Type of Disaster: Hurricane Kate beginning on November 21, 1985.
COUNTIES: Franklin, Gulf, Wakulla

WASHINGTON—Declared March 19, 1986
Type of Disaster: Severe storms, landslides, and flooding beginning on or about February 22, 1986
COUNTIES: Cowlitz

Announcement 86-2

Offer in Compromise

ATF has accepted an offer in compromise of $1,000 from Glenwood Beer Distributor, Inc., Erie, Pennsylvania. The distributor was in violation of 27 U.S.C. 205(c)(2) and 205(b)(3). Investigation disclosed that Glenwood offered inducements of free beer, made payments to a retailer, assisted a retailer in purchasing a beer box, and provided an employee of a retailer with a beer box.

Announcement 86-3

Offer in Compromise

An offer in compromise of $300 was accepted by ATF from Adams Wine Company, d/b/a Monarch Wine Company of Georgia, Atlanta, Georgia. The proprietor failed to timely file their wine tax return and pay the tax in violation of 26 U.S.C. 5041(a), and 26 U.S.C. 5041(b)(1)(2).

Announcement 86-4

Offer in Compromise

ATF has accepted an offer in compromise from Premium Beverage, Inc., Atlanta, Georgia of $8,000 to compromise civil liabilities incurred by violation of 27 U.S.C. 205(d). Premium Beverage induced retailers to purchase their malt beverages by making sales to retailers with the privilege of return for cash or credit.

Announcement 86-5

Offer in Compromise

ATF has accepted an offer in compromise of $1,000 from Takara Sake USA Inc, Berkeley, California. The offer was accepted to compromise liabilities arising from violations of 27 U.S.C. 205(b)(3). The proponent induced retailers to purchase Sake from them by furnishing Sake warmers. These inducements resulted in the exclusion of Sake sold by other wholesalers in interstate and foreign commerce.

Announcement 86-6

Offer in Compromise

ATF has accepted an offer in compromise of $17,500 from Falstaff Brewing Corporation, Ft. Wayne, Indiana. The offer was accepted to compromise liabilities arising from violations of 26 U.S.C 5412 and 5054(a). The company failed to adjust fill levels of bottles and cans when variances exceeded the .5 percent tolerance stated by Revenue Ruling 71-227 and to timely pay tax on such fill excess at the time of removal for consumption or sale.

Announcement 86-7

Offer in Compromise

ATF has accepted an offer in compromise of $3,000 from Bodegas Espanolas Argentinas Corporation d/b/a Bearco, Canovanas, Puerto Rico. The offer was accepted to compromise violations of 27 U.S.C. 205(b)(3) by inducing retailers to purchase wine products to the exclusion of like products sold by other interstate and foreign commerce by furnishing free equipment to such retailers.

Announcement 86-8

Offer in Compromise

ATF has accepted an offer in compromise from Austin, Nichols & Co., Inc., Lawrenceburg, Kentucky for $24,000. This offer was accepted to compromise delinquency penalties associated with failure to timely satisfy excise tax liabilities via Electronic Fund Transfer for the period October 1-15, 1984. The company was in violation of 26 U.S.C. 6656, 6651 and 5061.

Announcement 86-9

Offer in Compromise

ATF has accepted an offer in compromise from M & A Distributing Co., Inc., Austintown, Ohio for $2,500. This offer was accepted to compromise civil and criminal penalties imposed for violations of 27 U.S.C. 205(b)(3), in that M & A Distributing provided retailers with free tapping equipment as an inducement to purchase their products to the exclusion of competitor's products.

Announcement 86-10

Suspension of Wine Permit

ATF suspended the permit for Chateau Grand Travers, Ltd., Traverse City, Michigan during the period December 2, 3 and 4, 1985, for violations of 27 U.S.C. 205(e) and 26 U.S.C. 5367. The permittee failed to obtain proper label approval for wine, improperly labeled wine as to place of production, mistated alcohol content on wine labels, failed to pay wine taxes at proper rate, and failed to keep required records.

Announcement 86-11

Offer in Compromise

An offer of $2,000 was accepted by ATF from Ben E. Keith Company, Dallas, Texas. The proprietor was in violation of 27 U.S.C. 205(b)(3) in that they furnished retailers equipment, fixtures, services or other things of value. Additionally, they violated 27 U.S.C. 205(c)(2) by offering and giving premiums or compensation to officers, employees or representatives of the trade buyer, which included free tickets to sporting events and concerts.

Announcement 86-12

Refill Violation

ATF officers discovered during an inspection that JR's Place located in Reno, Nevada was in possession of one bottle of distilled spirits which had been refilled with other than the original contents. The retailer was in violation of 26 U.S.C. 5301(c)(2) and an offer in compromise of $50 was accepted.

Announcement 86-13

Retail Liquor Refill Violation

Mullin, Inc., dba, Bermuda Triangle (East) and Bermuda Triangle (West) of Reno, Nevada was found in violation of 26 U.S.C. 5301 (c)(2) for possession of eleven bottles of distilled spirits which had been refilled with other than the original contents. ATF accepted an offer in compromise of $1,100.

Announcement 86-14

Offer in Compromise

ATF accepted an offer in compromise from Hiram Walker, Inc., Farmington Hills, Michigan for $225,000. This offer was accepted for violations of 26 U.S.C. 5111(a), 5121(a), 5114(a)(1) and 27 U.S.C. 203(c)(1)(2), in that the proponent incurred special (occupational) tax liabilities by selling distilled spirits to industrial accounts, retailers and caterers without having paid special (occupational) tax as a wholesaler and/or as a retailer. In addition, the proponent failed to keep the records required by the Internal Revenue Code and did not obtain permits required by the Federal Alcohol Administration Act.

Announcement 86-15

Contaminated Wines

Information received via an article in the Washington Post on 7/12/85, indicated that Austrian wines shipped in bulk to West Germany were adulturated with diethylene glycol (DEG). As this substance posed a possible health threat to the American public, measures were taken to ascertain if any of this wine had entered the U.S., who were the producers, who were the bottlers/shippers and what brands had been adulturated. In addition, the Bureau of Alcohol, Tobacco and Firearms (ATF) immediately started testing domestic wines and European wines imported into the United States to ensure wines contaminated with DEG did not reach the domestic market. By using a gas-liquid chromatograph and a gaschromatograph-mass spectrometer, the ATF Laboratory has been able to detect DEG levels as low as 3 ppm. We also initiated with foreign governments an expeditious procedure for the daily exchange of information relative to the tracking of these wines before arrival on American shores. Through these analyses and coordination efforts, ATF was able to determine that specific wines from Austria, Germany and Italy contained varying amounts of DEG. We still do not allow Austrian wines entry into this country until tested by an ATF lab.

As of this date, we have tested approximately 1600 domestic and foreign wines and have found 54 Austrian wines, 24 Italian wines and 7 German wines that contain traces of DEG.

AUSTRIAN WINES TESTED AND FOUND TO CONTAIN DIETHYLENE GLYCOL

DESCRIPTION

1.
1982 St. Margarethener Auslese
Shipped and bottled by:
Weinkellerei Jos. v. Dawen Sohne
Urzig/Mosel, Germany

2.
1981 Gumpoldskirchner Doktor
Spatlese
Produced by:
Dr. Ernst Weigl
Gumpoldskirchen, Austria

3.
1982 Weissburgunder
Pinot Blanc Dry Cabinet
Produced by:
Weingut Sepp Hold,
St. Georgen, Austria

4.
1981 St. Margarethener Beerenauslese
Shipped and bottled by:
Weinkellerei Jos. v. Dawen Sohne
Urzig/Mosel, Germany

5.
1981 Rust Neusiedlersee
Trockenbeerenauslese
Shipped and bottled by:
Weinkellerei Jos. v. Dawen Sohne
Urzig/Mosel, Germany

6.
1983 Ruster Beerenauslese
Shipped and bottled by:
Ferdinand Pieroth Weinbau—
Weinkellerei GMBH
Burg Layen, West Germany

7.
1980 St. Margarethener
Trockenbeerenauslese
Shipped and bottled by:
Niederthaler Hof
Schlossbockelheim, West Germany

8.
1979 Breitenbrunner Welschriesling
Beerenauslese
Shipped and bottled by:
Ferdinand Pieroth GMBH
Burg Layen, West Germany

9.
1983 Illmitzer Felsonecker
Beerenauslese—Rosé
(Rosé Wine)
Shipped and bottled by:
Ferdinand Pieroth Weinbau GMBH
Burg Layen, West Germany

10.
1983 Illmitzer Kaisergarten
Beerenauslese
Shipped and bottled by:
Ferdinand Pieroth GMBH
Burg Layen, West Germany

11.
1983 Felser Schillingsberg Eiswein
Shipped and bottled by:
Ferdinand Pieroth Weinbau—
Weinkellerei GMBH
Burg Layen, West Germany

12.
1980 Rust-Neusiedlersee
Eiswein Beerenauslese—Rulander
Shipped by:
Wein-Bauer
Stockerau, Austria

13.
1983 Podersdorfer Kaisergarten
Beerenauslese
Shipped and bottled by:
Ferdinand Pieroth Weinbau—
Weinkellerei GMBH
Burg Layen, West Germany

14.
1979 Pamhagener
(Rosé Wine)
Shipped and bottled by:
Ferdinand Pieroth Weinbau—
Weinkellerei GMBH
Burg Layen, West Germany

15.
1981 Edelstaler Kaisergarten
Trockenbeerenauslese
Shipped and bottled by:
Ferdinand Pieroth—
Weinkellerei GMBH
Burg Layen, West Germany

16.
1981 Weidener Kaisergarten
Trockenbeerenauslese
Shipped and bottled by:
Ferdinand Pieroth Weinbau—
Weinkellerei GMBH
Burg Layen, West Germany

17.
1980 Edelstaler Kupferhohe Eiswein
(Gewurztraminer)
Shipped by:
Ferdinand Pieroth Weinbau—
Weinkellerei GMBH
Burg Layen, West Germany
Bottled by:
Weingut Haller, Monchhof, Austria

18.
1980 Monchhofer Steingang
Trockenbeerenauslese
Bottled by:
Weingut Haller
Monchhof, Austria

19.
1984 Osterreich Neusiedler
See Spatlese
(Karl Walden Selection)
Bottled by:
Richard Trimborn
Bad Kreuznach, Germany

20.
1982 Pustaqueen
Gruner Veltliner Kabinett
Bottled and shipped by:
J. Hafner
Monchhof, Austria

21.
1982 Rust Neusiedlersee Spatlese
Shipped by:
Weinkellerei St. Kunibert GmbH,
Leiwen/Germany

22.
1979 Ruster Trockenbeerenauslese
(Weiss-Burgunder)
Shipped by:
All Austrian Wines and Spirits
Vienna, Austria

23.
1982 Donnerskirchner Beerenauslese
Bouviertraube
Shipped and bottled by:
Ferdinand Pieroth GMBH
Burg Layen, West Germany

24.
1982 Oggauer Welschriesling
(Weinbaugebiet Rust/Neusiedlersee)
Produced by:
Weingut Ges.M. B. H. Sepp Hold,
St. Georgen, Austria

25.
1982 Hummelberg
Welsch-Riesling
Produced by:
Weingut GmbH Sepp Hold,
St. Georgen, Austria

26.
1978 Ruster Eiswein Traminer Auslese
Shipped by:
All Austrian Wines and Spirits
Vienna, Austria

27.
1983 Moorhof Hubertushof
Eiswein
Riesling Traminer Med. Dry
Shipped by:
Weingut Alexander Unger
St. Margarethen, Burgenland,
Austria

28.
1981 Rust Neusiedlersee
Blaufrankisch Spatlese
(Red Wine)
Selected by:
The Vintage Wine Selections
Bottled and shipped by:
Weink. Johann Pfeiffer, GmbH & Co.
Wittlich, Germany

29.
1983 St. Margarethener
Beerenauslese
Welschriesling
Selected by:
The Vintage Wine Selections
Bottled and shipped by:
Weink. Johann Pfeiffer, GmbH & Co.
Wittlich, Germany

30.
1979 Monchhofer Kaisergarten
Riesling u. Traminer
Beerenauslese
Bottled and shipped by:
Ferdinand Pieroth
Burg Layen, Germany

31.
1978 Illmitzer Kaisergarten
Weissburgunder
Spatlese
Bottled and shipped by:
Ferdinand Pieroth
Burg Layen, Germany

32.
1979 Ruster Altenberg
Muller Thurgau Auslese
Shipped by:
Wein Bauer
Stockerau, Austria

33.
1982 Osterreich Neusiedler
See Spatlese
(Karl Walden)
Bottled by:
Richard Trimborn GmbH
Bad Kreuznach Germany

34.
1983 Osterreich Neusiedler
See Spatlese
(Karl Walden)
Bottled by:
Richard Trimborn GmbH
Bad Kreuznach, Germany

35.
1981 Rust Neusiedlersee
Trockenbeerenauslese
Bottled and shipped by:
Weinbau Ewald Pfeiffer, GmbH
Urzig/Mosel, Germany

36.
1982 Falkensteiner
Gruner Veltiner
Bottled and shipped by:
Weinbau Ewald Pfeiffer, GmbH
Urzig/Mosel, Germany

37.
1982 St. Margarethener
Auslese
Welschriesling
Bottled and shipped by:
Weinbau Ewald Pfeiffer, GmbH
Urzig/Mosel, Germany

38.
1983 St. Margarethener
Welschriesling Beerenauslese
Bottled and shipped by:
Weinbau Ewald Pfeiffer, GmbH
Urzig/Mosel, Germany

39.
1981 Rust Neusiedlersee Traminer
Trockenbeerenauslese
Shipped and bottled by:
Johann Pfeiffer,
Urzig/Mosel, Germany

40.
1982 St. Georgener Spatlese
Weissburgunder
Bottled and Shipped by:
Weinbau Ewald Pfeiffer,
Urzig/Mosel, Germany

41.
1982 Falkensteiner Gruner Veltliner
Qualitatswein
Bottled and Shipped by:
St. Charles Weinkellerei GmbH,
Bernkasel-Kues, Germany

42.
1981 Rust Neusiedlersee
Trockenbeerenauslese
Bottled and Shipped by:
St. Charles Weinkellerei GmbH,
Bernkasel-Kues, Germany

43.
1983 St. Margarethener Beerenauslese
Welschriesling
Selected by:
The Vintage Wine Selections
Bottled and Shipped by:
Weinbau Ewald Pfeiffer,
Urzig/Mosel, Germany

44.
1979 Halbturner Kupferfels
Auslese—Eiswein
Bottled by:
Weingut Haller,
Monchhof, Austria
Shipped by:
Ferdinand Pieroth GmbH,
Burg Layen, West Germany

45.
1980 Frauenkirchner Steingang
Eiswein
Bottled and Shipped by:
Weingut Morhof,
St. Margarethen, Austria

46.
1979 Retzer Altenberg
Gruner Veltliner
Serial No. CH-79-001
White Wine
Produced by:
Wein-Bauer, Stockerau, Austria

47.
1979 Gumpoldskirchner Rotgipfler
White Wine
Serial No. CH-79-004
Produced by:
Wein-Bauer, Stockerau, Austria

48.
1979 Altenberg Riesling
White Wine
Serial No. CH-79-003
Produced by:
Wein-Bauer, Stockerau, Austria

49.
1979 Rot Altenberg
Red Light Wine
Serial No. Ch-79-005
Produced by:
Wein-Bauer, Stockerau,Austria

50.
1981 Bouvier Trockenbeerenauslese
Region Rust-Neusiedlersee
Bottled and Shipped by:
Bruder Grill Weingut
Fels-Krems, Austria

51.
1982 Muskat Ottonel Auslese
Region Rust-Neusiedlersee
Bottled and Shipped by:
Bruder Grill Weingut
Fels-Krems, Austria

52.
1982 Gruner Veltliner Spatlese
Region Klosterneuberg
Bottled and Shipped by:
Bruder Grill Weingut
Fels-Krems, Austria

53.
1982 St. Georgener Spatlese
Burgenland-Rust-Neusiedlersee
Bottled in Neumagen-Dhron, and
Shipped by Intergena KG,
Weinkellerei,
Schermbeck/Reinland-West
Germany

54.
1978 Kirchberger Konigsbutt
Gruner-Veltline
Eiswein-Beerenauslese
Bottled By:
Ferdinand Pieroth
Burg Layen, West Germany

GERMAN WINES TESTED AND FOUND TO CONTAIN DIETHYLENE GLYCOL

DESCRIPTION

1.
1984 Haus of Franz Liebfraumilch
Rheinpfalz
Qualitatswein
A.P. No. 5 907 021 518 84
Shipped by: Abfuller Weinkellerei
Johann Falkenburg GmbH.
Bernkastel-Kues

2.
1984 Haus of Franz Liebfraumilch
Nahe
Qualitatswein
A.P. No. 1 907 021 129 84
Shipped By: Abfuller Weinkellerei
Johann Falkenberg GMBH
Bernkastel-Kues

3.
1984 Haus Frickenstein Liebfraumilch
Nahe
Qualitatswein
A.P. No. 1 907 021 29 84
Shipped by: C.A. Warren GmbH. & Co. KG., Essen
Bottled by: Abfuller Sommerauer Schlosbergkellerei GmbH., Sommerau
Abfullort Bernkastel-Kues

4.
1982 Wolfsheimer Abtey Kabinett
Rheinhessen
Qualitatswein
A.P. No. 4 907 183 109 84
Bottled by: Ferdinand Pieroth GmbH
Weinbau-Weinkellerei Burg Layen

5.
1983 Saulheimer Domherr Eiswein
Rheinhessen
Qualitatswein
A.P. No. 4 907 183 108 84
Bottled by: Phillipp und Heinrich Baum Weinkellerei GmbH
Bad Kreuznach

6.
1979 Westhofener Berkloster Auslese
A.P. No. 4 907 183 27 80
Bottled By: Ferdinand Pieroth
Burg Layen, West Germany

7.
1984 Bad Durkheimer Feuerberg
Kabinett
A.P. No. 5 907 183 66 85
Bottled By: Ferdinand Pieroth GMBH
Weinbau-Weinkellerei
Burg Layen, West Germany

ITALIAN WINES TESTED AND FOUND TO CONTAIN DIETHYLENE GLYCOL

DESCRIPTION

1.
1981 Barbera D'Asti
Bottled By: F. Lli Dogliani S.p.A.
La Morra, Italy

2.
1980 Barbaresco
Bottled By: F. Lli Dogliani S.p.A.
La Morra, Italy

3.
1979 Kiola Barola
Bottled By: FDO S.p.A.
La Morra, Italy

4.
1973 Gattinara
Bottled By: F. Lli Dogliani S.p.A.
La Morra, Italy

5.
Lambrusco
Bottled By: Spabis S.p.A.
Calmasino, Italy

6.
Asti Spumante
Bottled By: F. Lli Dogliani S.p.A.
La Morra, Italy

7.
1981 D'Aquino Barbera D'Asti
Bottled By: F. Lli Dogliani S.p.A.
La Morra, Italy

8.
1980 Kiola Barbaresco
Bottled By: FDO S.p.A.
La Morra, Italy

9.
Riunite Bianco—Code No. 1124/RE
Bottled By: Cantine Coop. Riunite
Reggio Emilia

10.
Riunite Rosato—Code Nos. 1124/RE & 3321/BR
Bottled By: Cantine Coop. Riunite
Reggio Emilia

11.
Riunite Lambrusco dell Emilia—Code No. 1124/RE
Bottled By: Cantine Coop. Riunite
Reggio Emilia

12.
Riunite Spumante—Code No. 813/RE
Bottled By: Cantine Coop. Riunite
Reggio Emilia

13.
1979 D'Aquino Barbaresco
Bottled By: F. Lli Dogliani S.p.A.
La Morra—Piedmont

14.
1981 Valenti Barbaresco
Bottled By: FDO S.p.A.
La Morra, Italy

15.
1983 Valenti Barbera d'Alba
Bottled By: FDO S.p.A.
La Morra, Italy

16.
1980 Valenti Barola
Bottled By: FDO S.p.A.
La Morra, Italy

17.
1981 Spanna Del Piemonte
Bottled By: Azienda Vinicola
Castello Di Lozzolo
Lozzolo, Italia

18.
1973 Valenti Gattinara
Bottled By: FDO S.p.A.
La Morra, Italy

19.
1978 Valenti Barola Riserva
Bottled By: FDO S.p.A.
' La Morra, Italy

20.
1984 Contessina Vino da Tavola Vino rosa, Toscana
Bottled By: Ferdinand Pieroth
Weinbau-Weinkellerei GMBH
Burg Layen, West Germany

21.
1982 la Nebbia
bianco
della provincia di Sondrio
Bottled By: Imbottigliato dalla Casa Vinicola Enologica Valtellinese s.p.a.
Sondrio, Italy

22.
1983 Castelvecio
SOAVE Classico
Denominazione Di Origine Controllata
Bottled By: Casa Vinicola V.B.T. S.p.a.
Calmasino, Italy

23.
1983 Vietti
Moscato Del Piemonte
mosto d'uva parzialmente fermentato
IMB. SES—Castiglione T—
R.I. 2881/1 CN
Bottled By: Dalle Cantine Vietti
Castiglione Falletto

24.
1983 Vietti
vino da tavola barbera del Pietmonte
Bottled By: Vietti Castiglione Falletto

DEPARTMENT OF THE TREASURY
BUREAU OF ALCOHOL, TOBACCO AND FIREARMS
Distribution Services
7943 Angus Court
Springfield, Virginia 22153

OFFICIAL BUSINESS
PENALTY FOR PRIVATE USE, $300

986-2

BUREAU OF ALCOHOL,
TOBACCO AND FIREARMS

QUARTERLY BULLETIN

AR [illegible] F [illegible] BRARY
AUG 2 6 1986
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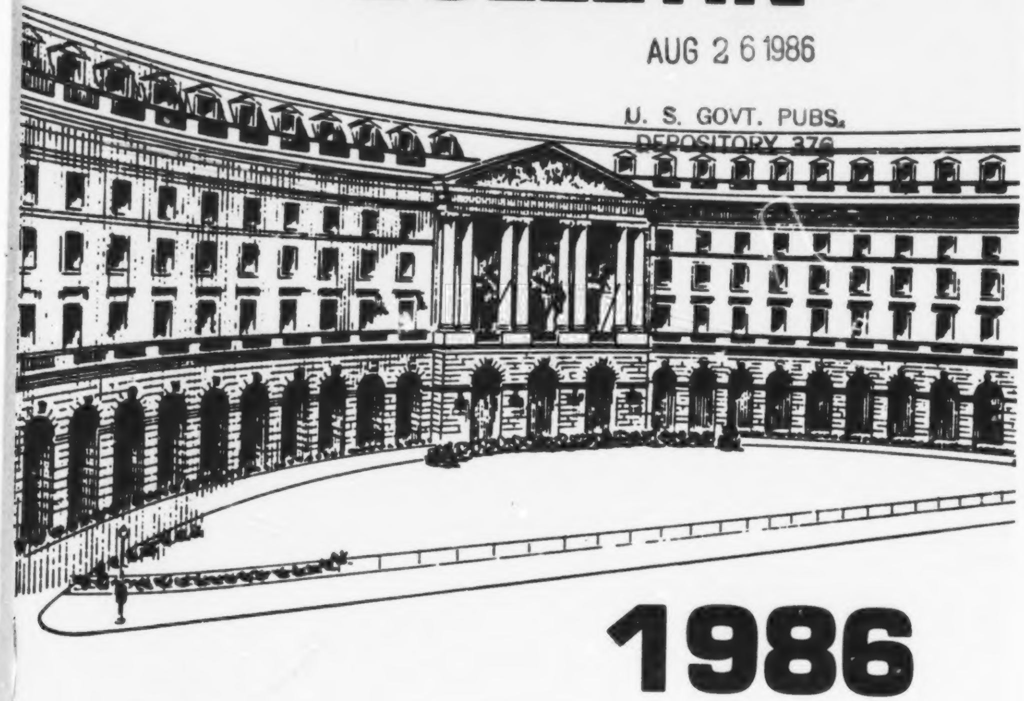

1986

VOLUME 2

DEPARTMENT OF TREASURY

T70.7:

QUARTERLY BULLETIN

Bureau of Alcohol, Tobacco and Firearms

Department of the Treasury

CONTAINS:

Treasury Decisions, Rulings, and Procedural and Administrative Matters Concerning Alcohol, Tobacco, Firearms, and Explosives

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NOTE

Comments concerning the contents of this issue may be directed to Bureau of Alcohol, Tobacco and Firearms, Office of Compliance Operations, Washington, DC 20226.

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For sale by the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402. Single copy price: $2.75 (domestic) and $3.44 (foreign). Subscription price: $10.00 (domestic) and $12.50 (foreign).

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Preface

The Alcohol, Tobacco and Firearms Quarterly Bulletin is the authoritative instrument of the Bureau for announcing official rulings and procedures, and for publishing Treasury decisions, legislation, administrative matters, and other items of general interest. It incorporates, into one publication, matters of the Bureau which are of public record.

The Bureau publishes rulings and procedures to promote uniform application of the laws and regulations it administers. Rulings interpret the requirements of laws and regulations and apply retroactively unless otherwise indicated; whereas, procedures establish methods for performing operations to comply with such law and regulations.

Rulings and procedures reported in the Bulletin do not have the force and effect of Treasury Department regulations but they may be used as precedents. In applying published rulings and procedures, the effect of subsequent legislation, regulations, court decisions, rulings, and procedures must be considered. Concerned parties are cautioned against reaching the same conclusions in other cases unless the facts and circumstances are substantially the same.

Definitions

Rulings and Procedures that have an effect on previous rulings or procedures use the following defined terms to describe the effect:

AMPLIFIED is used in a situation where no change is being made in a prior published position, but the prior position is being extended to apply to a variation of the fact situation as set forth in the new ruling. Thus, if an earlier ruling held that a principal applied to A, and the new ruling holds that the same principal also applies to B, the earlier ruling is amplified.

CLARIFIED is used in a situation where the language in a prior ruling is being made clear because the language has caused, or may cause, some confusion. It is not used where a position in a prior ruling is being changed.

DECLARED OBSOLETE is used in a situation where a previously published ruling is not considered determinative with respect to future transactions. This term is most commonly used in a ruling that lists previously published rulings that are declared obsolete because of changes in law or regulations. A ruling may also be declared obsolete because its substance has been included in regulations subsequently adopted.

MODIFIED is used in a situation where the substance of a previously published position is being changed. Thus, if a prior ruling held that a principle applied to A but not to B, but the new ruling holds that it applies to both A and B, the prior ruling is modified.

REVOKED is used in a situation where the position in the previously published ruling is not correct and the correct position is being stated in the new ruling. Rulings which have been revoked have no further effect.

SUPERSEDED is used in a variety of situations. The term may be used where the new ruling amplifies a prior ruling *if* both the position taken in the prior ruling and the position as amplified are contained in the text of the new ruling. The term may be similarly used where the new ruling clarifies or modifies a prior ruling. The term may also be used where, for the purpose of updating references, the new ruling does nothing more than restate the substance and situation of a prior ruling. For example, a ruling issued under former statutes and regulations (e.g. the 1939 Code – 26 CFR Part 225) may be reissued under the current statutes and regulations (e.g. the 1954 Code – 27 CFR Part 201). Lastly, the term may be used when it is desired to republish in a single ruling a series of situations, names, etc., that were previously published over a period of time in separate rulings.

SUPPLEMENTED is used in situations in which a list, such as a list of curios and relics, is published in a ruling and that list is expanded by adding further items in subsequent rulings. After the original ruling has been supplemented several times, a new ruling may be published that includes the list in the original ruling and the additions, and supersedes all prior rulings in the series.

ABBREVIATIONS:

The following abbreviations appear in material published in the Bulletin:

A,B,C, etc. – The name of individuals
ATF – Bureau of Alcohol, Tobacco and Firearms
ATFQB – Alcohol, Tobacco and Firearms Quarterly Bulletin
ATF Proc. – ATF Procedure
ATF Rul. – ATF Ruling
C.B. – Cumulative Bulletin
Ct.D. – Court Decision
CFR - Code of Federal Regulations
D.O. – Delegation Order
E.O. – Executive Order
FAA Act – Federal Alcohol Administration Act
F.R. – Federal Register
M,N,X,Y,Z, etc. – The names of corporations, places and businesses, according to context
Pub. L. – Public Law
Rev. Proc. – Revenue Procedure
Rev. Rul. – Revenue Ruling
Stat. – Statutes at Large
T.D. – Treasury Decision
T.D.O. – Treasury Department Order
U.S.C. – United States Code
x and y – used to represent certain number and when used with the world "dollars" represent sums of money.

Treasury Decisions

Subpart A—ALCOHOL

TITLE 27—ALCOHOL, TOBACCO PRODUCTS AND FIREARMS—CHAPTER I—BUREAU OF ALCOHOL, TOBACCO AND FIREARMS, DEPARTMENT OF THE TREASURY.

Kanawha River Valley Viticultural Area; Designation

T.D. ATF-226

27 CFR Part 9

AGENCY: Bureau of Alcohol, Tobacco and Firearms (ATF), Treasury.

ACTION: Final rule, Treasury decision.

SUMMARY: This final rule establishes a viticultural area in West Virginia, known as the Kanawha River Valley. In response to a petition submitted by Dr. Wilson E. Ward, owner of Fisher Ridge Vineyard, a winery located in Liberty, WV, ATF published a notice of proposed rulemaking, Notice No. 579, in the **Federal Register** of January 21, 1986 (51 FR 2728), proposing this area. The Kanawha River Valley viticultural area is entirely within the approved Ohio River Valley viticultural area. The establishment of viticultural areas and the subsequent use of viticultural area names as appellations of origin in wine labeling and advertising will help consumers better identify wines they purchase. The use of this viticultural area as an appellation of origin will also help winemakers distinguish their products from wines made in other areas.

EFFECTIVE DATE: May 8, 1986.

FOR FURTHER INFORMATION CONTACT: John A. Linthicum, FAA, Wine and Beer Branch, (202) 566-7626.

SUPPLEMENTARY INFORMATION: On August 23, 1978, ATF published Treasury Decision ATF-53 (43 FR 37672, 54624) revising regulations in 27 CFR, Part 4. These regulations allow the establishment of definitive viticultural areas. The regulations also allow the name of an approved viticultural area to be used as an appellation of origin on wine labels and in wine advertisements.

On October 2, 1979, ATF published Treasury Decision ATF-60 (44 FR 56692) which added a new Part 9 to 27 CFR, providing for the listing of approved American viticultural areas, the names of which may be used as appellations of origin.

Section 4.25a(e)(1), Title 27, CFR, defines an American viticultural area as a delimited grape-growing region distinguishable by geographical features, the boundaries of which have been delineated in Subpart C of Part 9. Section 4.25(e)(2), outlines the procedure for proposing an American viticultural area. Any interested person may petition ATF to establish a grape-growing region as a viticultural area. Dr. Wilson E. Ward, owner of Fisher Ridge Vineyard, a winery located in Liberty, WV, petitioned ATF to establish the Kanawha River Valley viticultural area.

General description. The approved area consists of approximately 1,000 square miles, containing 14 acres of grapevines and one bonded winery. It is entirely within the approved Ohio River Valley viticultural area. There is historical evidence that winemaking began in the area as early as 1826. Several hundred acres of grapevines grew in the area in the 1850s. The Civil War brought an end to commercial winemaking in the area until a new winery was built in 1967.

Name. The petitioner claims that the name Kanawha is derived from an obscure tribe of Indians which camped near the river. The name Kanawha was used for the river on the earliest survey maps. The Greater Kanawha Valley Foundation, a philanthropic organization which awards scholarships and grants, defines the Kanawha Valley as a ten-county area including all of the counties having watershed in the Kanawha River. The approved area is almost entirely within this Kanawha River Valley boundary which is currently in use. Numerous business enterprises in the area use the name Kanawha Valley or Kanawha River Valley as part of their trade names or as a description of the territory which they serve. In view of the fact that the entire area is within approximately 20 miles of the river, and appears to be almost entirely within the watershed of the river, ATF is satisfied that the area qualifies, in its entirety, for the use of the name Kanawha River Valley.

Geographic characteristics. The following rainfall data for the Kanawha River Valley illustrates the main geographical feature which distinquishes the approved area from the surrounding area.

WEATHER STATION LOCATIONS

Name	Annual precipitation	Summer[1] precipitation
Inside Petitioned Area		
Hogsett Gallipolis Dam	40.42	14.95
Winfield Locks	40.85	14.88
Averages	40.64	14.92
Outside Petitioned Area on the Ohio River		
Huntington	40.72	14.83
Parkersburg Weather Service Office	37.77	14.32
Ravenswood Lock Park	38.70	14.25
Averages	39.06	14.47
Outside Petitioned Area Inland From the Ohio River		
Branchland	43.79	15.94
Charleston	42.43	15.84
Clendenin	45.67	17.08
Hamlin	43.13	15.96
Ripley	45.94	16.35
Spencer	41.93	16.22
Averages	43.82	16.23

[1] Total precipitation during the months of June, July, August, and September, when grapes are most susceptible to mildew damage caused by excessive rainfall.

The river valleys average approximately 3 to 4 inches less rainfall annually than the inland terrain. During the critical period when grapes are growing on the vines, the river valleys average approximately 1.5 inches less rainfall than the inland terrain. Based on this data, the Ohio River Valley and the Kanawha River Valley share rainfall patterns which are more conducive to grape cultivation than areas which are farther inland from the rivers. The

6 weather stations named in the third list, above, are each located within approximately 16 miles of the approved boundary, supporting the location of the boundary.

In addition, the location of the inland boundary is also supported by the approximate boundary between the Central Allegheny Plateau Land Resource Area, in which the petitioned area is located, the Cumberland Plateau and Mountains Land Resource Area. According to the U.S.D.A. Soil Conservation Service Soil Map of West Virginia, the Cumberland Plateau and Mountains Land Resource Area is characterized by extensive deep mining and surface mining activities, as opposed to grape growing or other agricultural land uses.

Boundary. The northern and western boundaries of the Kanawha River Valley are the Ohio River. The inland boundary is approximately the approved Ohio River Valley boundary. The inland boundary is connected to the Ohio River with a series of straight lines running approximately along the perimeter of the Kanawha River watershed.

Rulemaking Proceeding

In response to Notice No. 579, ATF received comments from the petitioner and from Gus R. Douglass, Agriculture Commissioner of the State of West Virginia. Both comments were in favor of establishing the area as proposed. Accordingly, the proposed area is adopted unchanged.

* * * * *

List of Subjects in 27 CFR Part 9

Administrative practice and procedure, Consumer protection, Viticultural area, Wine.

Authority and Issuance

PART 9—[AMENDED]

27 CFR Part 9—American Viticultural Areas is amended as follows:

Paragraph 1. The authority citation for Part 9 continues to read as follows:

Authority: 27 U.S.C. 205.

Par. 2. The table of sections for 27 CFR Part 9 is amended by adding the heading of § 9.111 to read as follows:

Sec.

* * * * *

9.111 Kanawha River Valley.

Par. 3. Subpart C of 27 CFR Part 9 is amended by adding § 9.111 to read as follows:

§ 9.111 Kanawha River Valley.

(a) *Name.* The name of the viticultural area described in this section is "Kanawha River Valley".

(b) *Approved maps.* The approved maps for determining the boundary of the Kanawha River Valley viticultural area are 20 U.S.G.S. topographic maps in the 7.5-Minute series as follows:

(1) Addison, Ohio—W. Va., dated 1960;

(2) Gallipolis, Ohio—W. Va., dated 1958;

(3) Apple Grove, Ohio—W. Va., dated 1968, photorevised 1975;

(4) Glenwood, W. Va.—Ohio, dated 1968;

(5) Milton, W. Va., dated 1972;

(6) West Hamlin, W. Va., dated 1957;

(7) Hamlin, W. Va., dated 1958;

(8) Garrets Bend, W. Va., dated 1958;

(9) Scott Depot, W. Va., dated 1958;

(10) Saint Albans, W. Va., dated 1958;

(11) Pocatalico, W. Va., dated 1958;

(12) Sissonville, W. Va., dated 1958;

(13) Romance, W. Va.—Ky., dated 1957;

(14) Kentuck, W. Va., dated 1957;

(15) Kenna, W. Va., dated 1957;

(16) Ripley, W. Va., dated 1960;

(17) Cottageville, W. Va., dated 1960;

(18) Mount Alto, W. Va.—Ohio, dated 1958, photorevised 1972;

(19) Beech Hill, W. Va.—Ohio, dated 1957, photorevised 1975;

(20) Cheshire, W. Va.—Ohio, dated 1968;

(c) *Boundary description.* The boundary description of the Kanawha River Valley viticultural area includes (in parentheses) the name of the map on which each described point is found. The boundary description is as follows:

(1) The beginning point is the West Virginia-Ohio State Line at the confluence of Champaign Creek and the Ohio River. (Addison quadrangle)

(2) The boundary follows the West Virginia-Ohio State Line, in the Ohio River (across the Gallipolis and Apple Grove quadrangles) southwesterly to the point at which the Mason County-Cabell County Line intersects the State Line. (Glenwood quadrangle)

(3) The boundary proceeds in a straight line southerly to the benchmark at 583 ft. elevation in the town of Yates Crossing in Cabell County, WV. (Milton quadrangle)

(4) The boundary proceeds in a straight line southeasterly to the benchmark at 640 ft. elevation in the town of Balls Gap, in Lincoln County, WV. (West Hamlin quadrangle)

(5) The boundary proceeds in a straight line easterly (across the Hamlin, Garrett Bend, and Scott Depot quadrangles) to the benchmark at 590 ft. elevation in the town of Institute in Kanawha County, WV. (Saint Albans quadrangle)

(6) The boundary proceeds in a straight line northeasterly to the benchmark at 654 ft. elevation in the town of Pocatalico, in Kanawha County, WV. (Pocatalico quadrangle)

(7) The boundary proceeds in a straight line northeasterly (across the Sissonville quadrangle) to the confluence of Johns Branch and Sugar Creek in the town of Romance, in Jackson County, WV. (Romance quadrangle)

(8) The boundary proceeds in a straight line northwesterly (across the Kentuck quadrangle) to the confluence of Plum Orchard Run and Stonelick Creek in the town of Plum Orchard, in Jackson County, WV. (Kenna quadrangle)

(9) The boundary proceeds in a straight line northwesterly (across the Ripley quadrangle) to the Baltimore and Ohio Railroad crossing of State Highway 87 in the town of Evans, in Jackson County, WV. (Cottageville quadrangle)

(10) The boundary proceeds in a straight line northwesterly (across the Mount Alto quadrangle) to the benchmark of 674 ft. elevation in the town of Flatrock, in Mason County, WV. (Beech Hill quadrangle)

(11) The boundary proceeds northwesterly in a straight line (across the Cheshire quadrangle) to the beginning point.

Signed: March 7, 1986.

Stephen E. Higgins,
Director.

Approved: March 24, 1986.

Edward T. Stevenson,
Deputy Assistant Secretary (Operations).

(Filed by the Office of the Federal Register on April 7, 1986 8:45 am and published in the Federal Register for April 8, 1986, 51 F.R. 11912)

TITLE 27—ALCOHOL, TOBACCO PRODUCTS AND FIREARMS—CHAPTER 1—BUREAU OF ALCOHOL, TOBACCO AND FIREARMS, DEPARTMENT OF THE TREASURY.

Reinstatement of T.D. ATF-186: Use of Spirits in the Production of Wine and Wine Products To Be Rendered Unfit for Beverage Use

T.D. ATF-227

27 CFR Parts 19 and 240

AGENCY: Bureau of Alcohol, Tobacco and Firearms (ATF), Treasury.

ACTION: Final rule, Treasury decision without notice.

SUMMARY: This final rule reinstates the provisions of T.D. ATF-186 [49 FR 42567] published in the **Federal Register** of October 23, 1984. These provisions allowed the use of any type of distilled spirits in the production of wine and wine products which are to be rendered unfit for beverage use. In order to avoid further delay in the implementation of final "all-in-bond" regulations, ATF did not incorporate these earlier regulations in the text of T.D. ATF-198 (50 FR 8456) published in the **Federal Register** of March 1, 1985.

EFFECTIVE DATE: April 18, 1986.

FOR FURTHER INFORMATION CONTACT: Michael J. Breen, Coordinator, FAA, Wine and Beer Branch, Bureau of Alcohol, Tobacco and Firearms, 1200 Pennsylvania Avenue, N.W. Washington, DC 20226 (202-566-7626).

SUPPLEMENTARY INFORMATION:

Legislative Background

Prior to passage on July 18, 1984, of Pub. L. 98-369 (98 Stat. 494), only paragraph (5) of section 5214(a) permitted the withdrawal without payment of tax of distilled spirits for use in wine production, as authorized by 26 U.S.C. 5373. The language in section 5373 restricted the distilled spirits used in wine production to wine spirits having a minimum proof of 140 degrees or commercial brandy aged in wood for not less than two years and barreled at not less than 100 degrees of proof.

Pub. L. 98-369 amended section 5214(a) by adding a new paragraph (13) specifically authorizing the addition of any type of spirits in the production in the United States of wines and wine products which are to be rendered unfit for beverage use. These provisions were implemented by T.D. ATF-186. Prior to the promulgation of T.D. ATF-186, ATF issued temporary regulations (T.D. ATF-62, 44 FR 71613) which implemented Pub. L. 96-39, the Distilled Spirits Tax Revision Act of 1979. These temporary regulations, commonly referred to as the "all-in-bond" regulations, completely revised and recodified Title 27, Code of Federal Regulations, Part 201, as new Part 19. T.D. ATF-198 implemented the final "all-in-bond" regulations effective June 1, 1985. These final regulations were under review for an extended period of time and did not incorporate the regulations implemented with the issuance of T.D. ATF-186. Thus, these regulations merely reinstate without change the regulations initially implemented by T.D. ATF-186.

* * * * *

Drafting Information

The principal author of this document is Michael J. Breen of the FAA, Wine and Beer Branch, Bureau of Alcohol, Tobacco and Firearms.

Effective Date

Since this Treasury decision merely reinstates the provisions of T.D. ATF-186 (49 FR 42507) without change, it is found unnecessary and contrary to the public interest to issue this rule with notice and public procedure under 5 U.S.C. 553(b) or subject to the effective date limitation of 5 U.S.C. 553(d). Accordingly, the provisions of this final rule become effective upon publication in the **Federal Register.**

List of Subjects

27 CFR Part 19

Administrative practice and procedure, Alcohol and alcoholic beverages, Authority delegations, Claims, Chemicals, Customs duties and inspection, Electronic fund transfers, Excise taxes, Exports, Gasohol, Imports, Labeling, Liquors, Packaging and containers, Reporting and recordkeeping requirements, Research and security measures, Spices and flavorings, Surety bonds, Transportation, U.S. possessions, Warehouses, Wine.

27 CFR Part 240

Administrative practice and procedure, Authority delegations, Claims, Electronic funds transfers, Excise taxes, Exports, Food additives, Fruit juices, Labeling, Liquors, Packaging and containers, Reporting and recordkeeping requirements, Research, Scientific equipment, Spices and flavorings, Surety bonds, Transportation, Warehouses, Wine and vinegar.

Authority and Issuance

PART 19—DISTILLED SPIRITS PLANTS

Paragraph 1. The authority citation for Part 19 is revised to read as follows:

Authority: 19 U.S.C. 81c, 1311; 26 U.S.C. 5001, 5002, 5004-5006, 5008, 5041, 5061, 5062, 5066, 5101, 5111-5113, 5171-5173, 5175, 5176, 5178-5181, 5201-5207, 5211-5215, 5221-5223, 5231, 5232, 5235, 5236, 5241-5243, 5271, 5273, 5301, 5311-5313, 5362, 5370, 5373, 5501-5505, 5551-5555, 5559, 5561, 5562, 5601, 5612, 5682, 6001, 6065, 6109, 6302, 6311, 6676, 7510, 7805; 31 U.S.C. 9301, 9303, 9304, 9306.

Par. 2. The table of sections in Title 27, Code of Federal Regulations, Part 19, is amended to include new § 19.534 and reads as follows:

* * * * *

Sec.

* * * * *

19.534 Withdrawals of spirits for use in production of nonbeverage wine and nonbeverage wine products.

* * * * *

Par. 3. Section 19.531 in Subpart P is amended by striking out the conjunctive "or" at the end of paragraph (g), replacing the period at the end of paragraph (h) with a semicolon followed by the conjunctive "or" and a comma, and inserting new paragraph (i) to read as follows:

Subpart P—Transfers and Withdrawals

* * * * *

Withdrawal of Spirits Without Payment of Tax

§ 19.531 Authorized withdrawals without payment of tax.

Spirits may be withdrawn from bonded premises, without payment of tax for:

* * * * *

(i) Use in the production on bonded wine cellar premises of wine and wine products which will be rendered unfit for beverage use, as authorized by 26 U.S.C. 5362(d). The withdrawal of spirits as provided in paragraphs (a) through (e) of this section shall be in accordance with the regulations in Part 252 of this chapter.

(Sec. 311, Tariff Act of 1930, 46 Stat. 691, as amended (19 U.S.C. 1311); sec. 201, Pub. L 85-859, 72 Stat. 1362, as amended, 1375, as amended, 1382, as amended (26 U.S.C. 5214, 5312, 5373); sec. 3, Pub. L. 91-659, 84 Stat. 1965, as amended (26 U.S.C. 5066); sec. 455, Pub. L. 98-369, 98 Stat. 494 (26 U.S.C. 5214))

* * * * *

Par. 4. Section 19.534 is added to Subpart P and reads as follows:

§ 19.534 Withdrawals of spirits for use in production of nonbeverage wine and nonbeverage wine products.

Spirits withdrawn without payment of tax may be removed, pursuant to the provisions of Part 240 of this chapter, to a bonded wine cellar for use in the production of nonbeverage wine and nonbeverage wine products in accordance with the provisions of Part 170 of this chapter.

(Sec. 455, Pub. L. 98-369, 98 Stat. 494 (26 U.S.C. 5214))

PART 240—WINE

Par. 5. The authority citation for Part 240 continues to read as follows:

Authority: 5 U.S.C. 552(a); 26 U.S.C. 5001, 5008, 5041, 5042, 5044, 5061, 5062, 5111-5113, 5121, 5122, 5142, 5143, 5173, 5206, 5214, 5215, 5332, 5351, 5353, 5354, 5356-5358, 5361, 5362, 5364-5373, 5381-5388, 5391, 5392, 5551, 5552, 5661, 5662, 5684, 6065, 6091, 6109, 6301, 6302, 6311, 6651, 6676, 7011, 7302, 7342, 7502, 7503, 7606, 7805, 7851; 27 U.S.C. 205; 31 U.S.C. 9301, 9303, 9304, 9306.

Par. 6. In the table of sections and in the text of Part 240, the titles of Subparts PP, QQ, and SS are revised to read as follows and the title for Subpart RR is removed and reserved.

* * * * *

Subpart PP—Use of Spirits

* * * * *

Subpart QQ—Losses of Spirits in Bond

* * * * *

Subpart RR—(Reserved)

* * * * *

Subpart SS—Tax Liability for Spirits Withdrawn to a Bonded Wine Cellar

* * * * *

Par. 7. Title 27, Code of Federal Regulations, Part 240, is amended by striking the term "wine spirits" where it appears in the titles of the following sections in the table of sections and in the text of Part 240 and inserting in its place the word "spirits": §§ 240.142, 240.167, 240.169, 240.828, 240.830, 240.831, 240.832, 240.854, 240.904a.

Par. 8. The citation of laws following the text of § 240.820 is revised to read as follows:

* * * * *

(Sec. 201, Pub. L. 85-859, 72 Stat. 1382, as amended, 1833, as amended (26 U.S.C. 5373, 5382), as amended by sec. 455, Pub. L. 98-369, 98 Stat. 494 (26 U.S.C. 5214))

Par. 9. The text of § 240.822 is revised to read as follows:

§ 240.822 Withdrawal from distilled spirits plant.

The proprietor of any bonded wine cellar may withdraw and receive spirits without payment of tax from the bonded premises of a distilled spirits plant for use in the production of natural wine, or for addition to concentrated or unconcentrated juice for use in wine production, or for other uses as are authorized in this part.

(Sec. 201, Pub. L. 85-859, 72 Stat. 1382, as amended (26 U.S.C. 5373), as amended by sec. 455, Pub. L. 98-369, 98 Stat. 494 (26 U.S.C. 5214))

Par. 10. The undesignated center heading "RECEIPT OF WINE SPIRITS" which precedes § 240.823 is revised to read "RECEIPT OF SPIRITS".

Par. 11. The undesignated center heading "WINE SPIRITS ADDITIONS" which precedes § 240.830 is revised to read "SPIRITS ADDITIONS".

Par. 12. The undesignated center heading "DISPOSITION OF UNUSED WINE SPIRITS" which precedes § 240.836 is revised to read "DISPOSITION OF UNUSED SPIRITS".

Par. 13. The undesignated center heading "SAMPLES OF WINE SPIRITS" which precedes § 240.840 is revised to read "SAMPLES OF SPIRITS".

Subpart RR—[Reserved]

Par. 14. Subpart RR is reserved.

Par. 15. Title 27, Code of Federal Regulations, Part 240, is amended by striking the term "wine spirits" where it appears in the texts of the following sections and inserting in its place the word "spirits": §§ 240.143, 240.169, 240.208, 240.321, 240.823, 240.828, 240.830, 240.831, 240.832, 240.839, 240.880, 240.904, 240.904a.

Signed: March 11, 1986.

W. T. Drake,
Acting Director.

Approved: April 3, 1986.

Francis A. Keating, II,
Assistant Secretary, (Enforcement).

(Filed by the Office of the Federal Register on April 17, 1986 8:45 am and published in the Federal Register for April 18, 1986, 51 F.R. 13215).

TITLE 27—ALCOHOL, TOBACCO PRODUCTS AND FIREARMS—CHAPTER I—BUREAU OF ALCOHOL, TOBACCO AND FIREARMS, DEPARTMENT OF THE TREASURY.

Elimination of the 500 Milliliter Metric Standard of Fill for Distilled Spirits

T.D. ATF-228

27 CFR Part 5

AGENCY: Bureau of Alcohol, Tobacco and Firearms (ATF), Treasury.

ACTION: Treasury decision, final rule.

SUMMARY: This final rule eliminates the 500 ml size container from the metric standards of fill for distilled spir-

its. This reduces the total number of authorized metric standards of fill for distilled spirits from eight to seven. This action is in response to our analysis of the metric sizes and to comments on Notice No. 486 (September 23, 1983, 48 FR 43346). This action will be completed in a phase-out period ending June 30, 1989. Beginning July 1, 1989, importers and bottlers will no longer be able to import or bottle distilled spirits in 500 ml containers although they may continue to sell existing stocks on hand.

EFFECTIVE DATE: June 2, 1986.

FOR FURTHER INFORMATION CONTACT: Edward A. Reisman, FAA, Wine and Beer Branch, Bureau of Alcohol, Tobacco and Firearms, 1200 Pennsylvania Avenue NW., Washington, DC 20226 (202-566-7626).

SUPPLEMENTARY INFORMATION:

Summary

375 and 500 milliliter standards of fill. On September 23, 1983, ATF published Treasury Decision ATF-146 (48 FR 43319) adopting the 100 ml size and 375 ml size as standards of fill for distilled spirits. These two metric standards of fill became effective for use in interstate and foreign commerce on January 3, 1984. Concurrent with this Treasury decision, ATF published Notice No. 486 (48 FR 43346) relating to the 375 ml size and 500 ml size.

A major concern with the 375 ml and 500 ml sizes was the similarity in bottle size and shape even though the volumetric difference is 125 ml, or slightly over four fluid ounces. Because of this concern, ATF issued Notice No. 486 which requested comments on whether bottlers should be allowed the option of bottling their products in either the 375 ml size or 500 ml size, but not both; or whether the 500 ml size should be eliminated as a standard of fill for distilled spirits.

After carefully studying the issues, ATF has decided to phase-out the 500 ml metric standard of fill, for the following reasons;

1. The comments were overwhelmingly in favor of elimination of that size.

2. There have been reports of consumer confusion between the 375 ml and 500 ml sizes. Because of the closeness in fill and bottle shape, consumers are having difficulty distinguishing between the two sizes when purchasing distilled spirits products at retail.

3. Retailers and wholesalers strongly objected to the continuance of the 500 ml standard of fill. They claimed that even the members of the alcohol beverage industry were having difficulty distinguishing between the 375 ml and 500 ml sizes. These retail dealers and wholesalers also claimed that stocking both sizes was causing unnecessary additional costs in storage, handling and displaying. They said that the new 375 ml size filled the market need that was previously satisfied by the 500 ml size.

4. One of the purposes for adopting the metric standards of fill in the United States was to reduce the number of confusing bottle sizes available to the consumer. The new metric sizes were intended to offer consumers a rational range of size choices that were easy to distinguish on the store shelf and which could be easily differentiated.

Elimination of the 500 ml size helps prevent size proliferation in the number of metric sizes needed for distilled spirits products. This action eliminates one unnecessary size and leaves a simple rational set of metric bottle sizes to choose from.

Since the introduction of metric bottle sizes in the United States, two additional sizes, the 100 ml and 375 ml sizes, were added because there was strong industry and consumer demand for them. Although there was strong demand to add each of these new metric sizes, it has unfortunately resulted in size proliferation. Elimination of the 500 ml size will help to rectify the problem.

Background

500 ml Metric Standard of Fill. The 500 ml size metric standard of fill was authorized by T.D. ATF-25 (January 6, 1976, 41 FR 1063). That Treasury decision established the original metric standards of fill for distilled spirits in the United States, effective January 1, 1980. The six original sizes were 1.75 liters, 1 liter, 750 ml, 500 ml, 200 ml and 50 ml. Prior to the Treasury decision the Bureau published a Notice of Proposed Rulemaking and Public Hearing in the **Federal Register** on July 16, 1975.

The Notice contained proposals made by both the Distilled Spirits Council of the United States and ATF. The sizes were adopted on the basis of evidence received at public hearings and in written comments.

375 ml Metric Standard Of Fill. The 100 ml and 375 ml sizes were authorized as metric standards of fill in 1984. In 1981, Bacardi Imports, Inc. petitioned ATF to allow the 375 ml size to be used in interstate and foreign commerce. This petition was supported by various segments of the distilled spirits industry. Bacardi Imports, Inc. maintained in their petition that there was a consumer demand for the 375 ml size and that it would facilitate the international market since Canada, the United Kingdom, and the European Economic Community (EEC) utilize the 375 ml size as one of their standards of fill.

ATF proposed the 375 ml size as a standard of fill for distilled spirits on August 16, 1982 (Notice No. 417; 47 FR 35521). 48 comments were received in response to that notice, of which 37 supported the 375 ml size and 11 were opposed. Seven of the supporters of the 375 ml size wanted industry members to have the option of bottling the 375 ml or 500 ml size but not both sizes. Nine of the supporters of the 375 ml size wanted the 500 ml size eliminated if the 375 ml size was adopted.

Based on these comments, ATF adopted the 375 ml size, effective January 3, 1984, but decided to air the possibility of eliminating or restricting the 500 ml size.

Notice No. 486. In Notice No. 486, September 23, 1983, ATF requested comment from all interested persons on the alternatives raised by the commenters during rulemaking on the 375 ml size. ATF requested comments on the following specific issues:

(a) Would retention of the 500 ml size lead to consumer confusion or deception because of its similarity to the 375 ml size?

(b) Since there is only slightly over four fluid ounces difference between the 375 ml size and the 500 ml size, is there a need to have both sizes? Would the 375 ml size fulfill the market need for the 500 ml size?

(c) In the event the 500 ml size is eliminated as a standard of fill, what is a reasonable transition period to allow for a use-up of present inventories of this bottle size?

(d) Does the greater benefit to both industry and the consumer exist with both sizes in the market without qualification since it allows greater flexibility in bottling and wider size choices on purchase?

(e) Would repeat purchases negate any confusion or deception that may arise between the 375 ml size and 500 ml size? Does the option of having a purchase choice between the 375 ml size and the 500 ml size outweigh any confusion or deception that may arise?

Extension of Comment Period. The comment period for Notice No. 486 was scheduled to close on March 23, 1984, but was extended by Notice No. 505, March 21, 1984 (49 FR 10553) until January 2, 1985. ATF granted this extension at the request of The Distilled Spirits Council of the United States (DISCUS) and the National Association of Beverage Importers (NABI) who wanted a one year extension to give industry time to make an informed choice through market surveys based on consumer preferences and purchases.

Analysis of Comments. 133 comments were received. 108 of the comments generally were opposed to the retention of the 500 ml size. 24 wanted the 500 ml size retained. The majority (98) of the comments came from wholesalers and retailers.

SYNOPSIS OF COMMENTS

	Rescind 500	Retain 500
Wholesalers and Retailers ..	96	2
U.S. Distillers	4	6
Foreign Distillers	0	2
Importers	3	7
Associations	2	3
State Authorities..................	5	1
Foreign Governments	0	2

The National Liquor Stores Association and the Wine & Spirits Wholesalers of America wanted the 500 ml size rescinded. The National Association of Beverage Importers, the U.S. Metric Association and the Kentucky Wholesale Liquor Dealers wanted the 500 ml size retained. Six state authorities commented. Kentucky, Vermont, Wyoming, Arkansas and Massachusetts favored rescision of the 500 ml size while Iowa favored its retention. Two foreign governments, Germany and France, favored retention of the 500 ml size.

Comments Favoring Elimination Of The 500 ml Size

The basic objection to the 500 ml size was that the 375 ml and 500 ml sizes cause consumer confusion because both sizes have similar shapes and heights. Many commenters said the 375 ml size fulfills the market need for the 500 ml size. The majority of commenters said that there is no greater benefit to industry and consumers to have both sizes even though it would allow greater flexibility in bottling and permit wider consumer choices.

Most commenters said that the option of having a purchase choice between the 375 ml and 500 ml size does not outweigh any confusion or deception that may arise. Some commenters said that the 500 ml size was not a good seller and never a popular container size with the public as compared to other available metric sizes. Ten commenters responded to the question in the notice on a reasonable transition period to allow a use-up of the 500 ml size container. The time requested varied from three months to three years. The following are some specific comments on that issue:

A U.S. distiller said that the 500 ml size is too close to the 750 ml size and does not give the consumer enough of a choice.

A wholesaler stated that existence of both the 500 ml and 375 ml sizes will cause additional costs in storage, handling and displaying these smaller, yet similar quantity sized containers.

A wholesaler said that many wholesalers and retailers claim that adding new metric sizes adds increased inventories, often resulting in financial difficulties. A retail liquor dealer conducted a survey on the 375/500 ml size issue with 250 of their regular customers. The vote resulted in 214 in favor of only one size, the 375 ml, and 36 in favor of the other options.

A state commented that a proliferation in bottle sizes being introduced into the market will cause many customers to have a difficult time trying to compare prices and make economical purchases.

Another state said the introduction of the 375 ml size makes it necessary for the consumer to choose a new bottle size. The consumer would have to evaluate its cost from among a confusing number of container sizes so closely related in size and price that only the most discerning shoppers will choose wisely.

A retail liquor store association stated that the varying bottle shapes between the 375/500 ml sizes may be confusing and misleading to the consumer.

A wholesale liquor dealer association stated that due to space limitations, retailers can stock either the 375 or 500 ml size but not both.

A number of wholesalers said that the 375 ml size will present the best value to the consumer by being half the size of the 750 ml bottle. They also said it will also be easy for the consumer to distinguish by size and price between the 375 ml and 750 ml size. Many of them also claimed that there was no public demand for both the 375 ml and 500 ml sizes.

A wholesaler said that a recent survey of their key retail accounts has indicated that retailers will stock only one size because of inventory, shelf space and cost limitations.

Many retailers said that a consumer who wants one of those sizes is going to be satisfied with the other. Many of them said that the elimination of the 500 ml size would be in the best interest to all.

Comments Favoring Retention of the 500 ml Size

An importer said that retention of the 500 ml size would allow the consumer a wider range of size choices and that the enhanced competition should benefit both industry and consumers. They also said that most sales are made in size grouping and are clearly marked on the shelves in retail liquor stores. The importer noted that net content statements are required to appear in a legible manner on bottles.

One importer claimed that the exclusion of the 500 ml bottle size from the standards of fill would create a nontariff trade barrier.

Another importer said the elimination of the 500 ml would unfavorably affect the ability to market proprietary brands of distilled spirits. In the past two years they have found increased demand by consumers for both the 500 ml and 375 ml size. They claim this is due to higher prices and the proliferation of imported proprietary products in the United States.

A bottler and wholesaler said that the elimination of the 500 ml would create a void because the difference in retail price between the 375 ml and 750 ml could be as much as $3.50. The same commenter said that the consumer would benefit from the higher degree of marketing flexibility achieved from the free use of both sizes on the market place. The commenter said that some industry members have a substantial investment in their bottle molds and in the equipment specially adapted for use with the 500 ml size. The commenter said that prohibiting the use of the 500 ml size would jeopardize these investments.

A foreign distiller claimed that both the 375 ml and 500 ml bottle sizes are required by various parts of the industry since they serve different purposes. The distiller said the ratio of size difference between the 375 ml and 500 ml size is exactly the same as that between the 750 ml and 1 liter sizes. In addition, the distiller claimed that the 500 ml size is a less expensive way of buying a recognizable brand of distilled spirits, whereas the 375 ml clearly is a small or half bottle. The distiller also said that by allowing both sizes, industry has greater flexibility and the consumer a wider choice to pick from. The distiller stated that familiarity with a product on repeat purchase should eliminate any possible confusion.

A U.S. distiller said that they continue to experience strong consumer demand for both sizes. They claim a greater benefit to both industry and consumers exists with both sizes in the market since it allows a greater flexibility in bottling and wider size choices on purchase. They also said that both sizes are critical to some brands of distilled spirits.

Another U.S. distiller said that the industry best serves the consumer with a broad selection of sizes to fit varied consumer needs.

A French government official stated that the 500 ml size makes an intermediate price for the consumer who can't afford, in a larger size, those expensive liqueurs in which France is well represented.

An association favored retention of the 500 ml size as a rational metric size and opposed introduction of the 375 ml size.

One commenter said that the elimination of the 500 ml size will create a higher retail price-point position between the 750 ml and 200 ml bottle for the 375 ml bottle. This would mean higher consumer cost per milliliter for the 375 ml bottle. The commenter concluded that the consumer's options are reduced and purchase costs increased because of the elimination of the 500 ml size.

An importer stated that the market place should dictate whether the 500 ml size remains a viable option for American consumers. They now oppose any regulations which restrict the ability to market both sizes.

Conclusion

Based on all the comments received, ATF believes that retention of the 500 ml size would lead to consumer confusion because of its similarity to the 375 ml size.

There is no need for both the 375 ml and 500 ml sizes since there is only a slight difference between the two, and the 375 ml size will fulfill the market need for the 500 ml size. A greater benefit does not exist to either industry or the consumer with both sizes on the market because of the confusion that may develop. While it is possible that future purchases may negate confusion or deception that may arise between the two sizes, it is also possible that they may not because of the closeness of size.

Two of the reasons for the conversion from U.S. measure to metric standards of fill were to reduce the large number of sizes available to the consumer and to eliminate consumer confusion over them.

The majority of comments from the wholesalers and retailers indicated their strong opposition to the 500 ml size not only because the potential confusion that might be experienced by the alcohol beverage industry and consumers but the concurrent use of the 500 ml size and the 375 ml size is creating expensive and complicated inventory problems (storage, handling, and displaying) for the entire wholesale/resale tier of the industry.

We do not feel that a non-tariff trade barrier is created by the phase-out of the 500 ml size because there is still available to bottlers in foreign countries the option of using the 375 ml size standard of fill. Therefore, there would not be differing bottling requirements for domestic and foreign bottlers. Of all the comments received (including those from importers and foreign governments), only one importer raised the non-tariff trade barrier issue.

ATF is rescinding the 500 ml standard of fill for distilled spirits. Since the majority of comments from the industry indicate that the existence of both the 500 ml and the new 375 ml size are creating confusion from the wholesale/retail industry level and the public, ATF believes the elimination of the 500 ml size is the best alternative.

Effective Date: ATF is making this regulation effective July 1, 1989. ATF believes this three year phase-out period will allow industry to make the necessary preparation to eliminate the 500 ml size container, prior to the mandatory phase-out date, will be authorized to be marketed after the mandatory date. No spirits may be imported into this country in the 500 ml size containers unless they are accompanied by a certificate of statement that they were bottled prior to the mandatory date.

* * * * *

Drafting Information

The principal author of this document is Edward A. Reisman of the FAA, Wine and Beer Branch.

List of Subjects in 27 CFR Part 5

Advertising, Consumer protection, Customs duties and inspection, Imports, Labeling, Liquors, Packaging and containers.

Authority and Issuance

Part 5—Labeling and Advertising of Distilled Spirits is amended to read as follows:

Paragraph 1. The authority citation in Part 5 is revised to read as follows:

Authority: 26 U.S.C. 5301, 7805; 27 U.S.C. 205.

Par 2. Section 5.47a is amended by revising paragraph (a) (by qualifying the 500 ml size in the metric standards of fill) to read as follows:

§ 5.47a Metric standards of fill (distilled spirits bottled after December 31, 1979).

(a) *Authorized standards of fill.* The standards of fill for distilled spirits are the following:

1.75 liters
1.00 liter
750 milliliters
500 milliliters (Authorized for bottling until June 30, 1989)
375 milliliters
200 milliliters
100 milliliters
50 milliliters

* * * * *

Par. 3 Section 5.53 is amended by adding a paragraph (b) providing for the importation of 500 ml bottles of distilled spirits bottled prior to July 1, 1989, to read as follows:

§ 5.53 Certificate of nonstandard fill.

* * * * *

(b) Distilled spirits imported in 500 ml containers shall not be released from Customs custody after June 30, 1989:

(1) Unless the distilled spirits are accompanied by a certificate issued by the government of the appropriate foreign country, stating that the distilled spirits were bottled or packed prior to July 1, 1989; or

(2) Unless the distilled spirits are being withdrawn from a Customs bond-

ed warehouse or foreign trade zone into which entered on or before June 30, 1989.

Signed: December 17, 1985.

Stephen E. Higgins,
Director,

Approved; April 11, 1986.

Francis A. Keating II,
Assistant Secretary (Enforcement).

Filed by the Office of the Federal Register on April 30, 1986 8:45 am and published in the Federal Register for May 1, 1986, 51 F.R. 16167)

TITLE 27—ALCOHOL, TOBACCO PRODUCTS AND FIREARMS—CHAPTER I—BUREAU OF ALCOHOL, TOBACCO AND FIREARMS, DEPARTMENT OF THE TREASURY

Wine Labeling and Advertising; Use of Geographic Brand Names

T.D. ATF—229

27 CFR Part 4

AGENCY: Bureau of Alcohol, Tobacco and Firearms (ATF), Department of the Treasury.

ACTION: Treasury decision, final rule.

SUMMARY: This final rule amends the labeling regulation in 27 CFR 4.39(i), concerning geographic brand names of viticultural significance. In essence, the amended regulation permits a brand name of viticultural significance to be used on a label only if the wine meets the appellation of origin requirements for the geographic area named. However, the bottling winery need not be located in the geographic area used in the brand name.

EFFECTIVE DATE: July 7, 1986.

FOR FURTHER INFORMATION CONTACT: James P. Ficaretta or John A. Linthicum, FAA, Wine and Beer Branch, Bureau of Alcohol, Tobacco and Firearms, 1200 Pennsylvania Avenue NW., Washington, DC 20226, 202-566-7626.

SUPPLEMENTARY INFORMATION:

Background

Treasury Decision ATF-53 (43 FR 37672, August 23, 1978 and 43 FR 54624, November 22, 1978), set forth a new provision in 27 CFR 4.39(i) by providing that a brand name of viticultural significance may not be used unless the bottling winery is located within the geographic area used in the brand name, and the wine meets the appellation of origin requirements for the geographic area named, or; the brand name is qualified by the word "brand" immediately following the brand name in the same size of type and as conspicuous as the brand name itself.

As specified in § 4.39(i), a name has viticultural significance when it is the name of a state or county (or the foreign equivalents), when approved as a viticultural area in 27 CFR Part 9, or by a foreign government, or when found to have viticultural significance by the Director.

Petition to Defer the Mandatory Compliance Date

The Wine Institute petitioned ATF to delay the effective date of § 4.34(c) (also promulgated under T.D. ATF-53), and § 4.39(i) from January 1, 1983, to January 1, 1985. Due to the fact that the validity of other regulations promulgated by T.D. ATF-53 was cast into doubt by *Wawszkiewicz* v. *Department of the Treasury,* 480 F.Supp. 739 (D.D.C. 1979), *rev'd in part* and *aff'd in part,* 670 F.2d 296 (D.C. Cir. 1981), wine industry members could not effectively plan to redesign their labels to conform to all the requirements set forth in the Treasury decision. The Wine Institute believed that its members should only be required to redesign their labels once in order to conform to the rules promulgated in T.D. ATF-53, and they could not be sure what those rules were until the *Wawszkiewicz* litigation was finalized.

Thereafter, ATF issued a notice of proposed rulemaking which resulted in T.D. ATF-126 (January 21, 1983; 48 FR 2762) deferring the effective date of 27 CFR 4.34(c) and 4.39(i) until January 1, 1985. A final rule concerning § 4.34(c) was subsequently published on January 7, 1985 (50 FR 759). The mandatory compliance date for § 4.39(i) was eventually extended until January 1, 1987, as a result of T.D. ATF-194 (January 7, 1985; 50 FR 758).

In their petition to defer the mandatory compliance date for §§ 4.34(c) and 4.39(i) in T.D. ATF-53, the Wine Institute reiterated their earlier position on the use of (TM) and (R), in lieu of the word "brand." They believed that the provision in § 4.39(i) requiring the word "brand" to appear in the same size of type as the brand name was unaesthetic. In addition, they believed the word "brand" would not preclude any misleading impressions that might be conveyed by a geographic brand name.

Notice No. 522

Based on the Wine Institute's petition, ATF published Notice No. 522 (May 7, 1984; 49 FR 19330), presenting four alternatives to § 4.39(i), but proposing action on one:

Alternative No. 1. This alternative consisted of leaving the regulation (§ 4.39(i)) as currently stated.

Alternative No. 2. This alternative proposed to eliminate the regulation, § 4.39(i), and therefore, any brand name found to be misleading without being qualified by the word "brand" would, under § 4.33(b), no longer be allowed to appear on labels of wine.

Alternative No. 3. This alternative would amend the type size requirement for the word "brand." Instead of the word "brand" appearing in the same size type as the brand name, it would only be required to appear in type of at least one-half the size of the brand name, but no smaller than two millimeters. The other requirements as stated in § 4.39(i) would remain the same.

Alternative No. 4. This was the alternative proposed by ATF. A brand name of viticultural significance may not be used unless: The bottling winery is located within the geographical area used in the brand name, and the wine meets the appellation of origin requirements for the geographical area name, *or,* the brand name is qualified by the word "brand" immediately following the brand name in the same size of type and as conspicuous as the brand name itself, *or;* the wine is labeled with an appellation of origin that is either a county or viticultural area if the geographic area named in the brand name is other than a state name and is a name to which the wine is not entitled as an appellation of origin, *or;* the wine is labeled with an appellation of origin that is a state name, county name, or viticultural area name, if the brand name contains a state name to which the wine is not entitled as an appellation *of origin, or;* the wine is labeled with a statement which the Director finds to be sufficient to dispel the impression that the geographic term used in the brand name is an appellation of origin.

The comment period for Notice No. 522 closed on July 6, 1984. It was extended until September 14, 1984, as a result of Notice No. 534 (July 12, 1984; 49 FR 28417), and extended again, until January 2, 1985, as a result of Notice No. 542 (September 4, 1984; 49 FR 34847).

Analysis of Comments

In response to Notice Nos. 522, 534 and 542, ATF received 26 comments. The majority of the commenters (17) favored Alternative Nos. 2 and 4. Nine commenters (representing mostly foreign interests) were in favor of Alternative No. 2. Most of the eight commenters favoring Alternative No. 4, represented domestic interests.

Most commenters favoring Alternative No. 2 believed that ATF's proposed Alternative No. 4 encouraged misleading brand names. For example, it was believed that a brand name of geographical significance, such as "Rheinhessen," would be acceptable as long as an appellation of origin (such as "The Hamptons") appeared on the label. In that regard, however, ATF would not approve "Rheinhessen" as a brand name on a label for wine other than from Germany, in accordance with 27 CFR 4.24(c) and 4.39(k).

One commenter, favoring Alternative No. 2, stated that Alternative No. 4 would allow "the possibility of using two appellations of origin, one which is truthful and one which is a brand name and thus misleading. The consumer would not be able to tell which is the truthful appellation."

Commenters favoring Alternative No. 2 also referred to various international resolutions and agreements, supported by the U.S., concerning protection of non-generic designations of origin. One specific reference was the exchange of letters (July, 1983) between the EEC Commission and the U.S. In their letter, the EEC noted with satisfaction the willingness of the U.S. to work within the framework of § 4.24(c)(3) to prevent "erosion" of non-generic designations of geographic significance indicating a wine-growing area in the EEC.

Basically, proponents of Alternative No. 4 believed that this alternative offered maximum flexibility to the industry while affording maximum protection to the consumer. As one commenter stated, the consumer is assured "that no misleading impression can be conveyed, either because the brand name correctly identifies the origin of the wine, or because the label contains one of a variety of definite statements sufficient to dispel the impression that the brand name refers to the origin of the wine." At the same time, industry is afforded several alternatives in lieu of having to use the "aesthetically unattractive" word "brand." In addition, this commenter noted that the word "brand" "would not resolve the question of misleading consumer information."

Final Rule

ATF believes that the brand name, usually the most prominent item on a wine label, in certain instances conveys information to the consumer. In the case of a geographic brand name of viticultural significance, ATF believes that such a name on a label indicates the origin of the wine, that is, the place where the grapes were grown. This was brought out in the comments received in response to Notice No. 522.

In addition, as mentioned earlier, some commenters believed that use of the word "brand" did not dispel any misleading impression that could be conveyed by a brand name of viticultural significance where the wine did not meet the appellation of origin requirements for the geographic area named.

Therefore, with the effective date of this final rule, a brand name of viticultural significance may not be used unless the wine meets the appellation of origin requirements of § 4.25a for the geographic area named. Further, the word "brand" may not be used on labels where the wine does not meet the appellation of origin requirements for the area named in the brand name. For example, the word "brand" may not be used with the brand name "Carmel Valley Vineyards" if the wine does not meet the appellation of origin requirements for Carmel Valley.

For certificates of label approval issued prior to the effective date of this final rule, the wine shall meet the appellation of origin requirements for the geographic area named in the brand name, *or,* the wine shall be labeled with an appellation of origin in accordance with § 4.34(b) as to location and size of type of either; (A) A county or a viticultural area, if the brand name bears the name of a geographic area smaller than a state, or (B) a state or county appellation of origin or a viticultural area, if the brand name bears a state name, *or,* the wine shall be labeled with some other statement which the Director finds to be sufficient to dispel the impression that the geographic area suggested by the brand name is indicative of the origin of the wine.

As with new certificates of label approval, the word "brand" may not be used on labels where the wine does not meet the appellation of origin requirements for the area named in the brand name. ATF will be reviewing existing certificates of label approval to insure that the requirements of the new regulation are met.

ATF has reconsidered its position regarding the location of the bottling winery when a geographic brand name of viticultural significance is used. Under § 4.39(i), as well as ATF's proposed Alternative No. 4 in Notice No. 522, the bottling winery had to be located in the geographic area indicated in the brand name. By definition, an appellation of origin indicates where the grapes (fruit) are grown. There is no reference or requirement as to the location of the bottling winery. Only under the requirements of § 4.26 ("estate bottled") is the location of the bottling winery a factor. Therefore, unless otherwise required, when a geographic brand name of viticultural significance is used, the bottling winery need not be located in the geographic area named.

ATF believes that this final rule will provide industry with sufficient flexibility in designing their labels, while at the same time providing consumers with protection from any misleading impressions that might arise from the use of geographic brand names.

* * * * *

Disclosure

Copies of the petition, the notices of proposed rulemaking, all written comments, and this final rule will be available for public inspection during normal business hours at: Office of Public Affairs and Disclosure, Room 4406, Federal Building, 12th and Pennsylvania Avenue NW., Washington, DC.

List of Subjects in 27 CFR Part 4

Advertising, Consumer protection, Customs duties and inspection, Imports, Labeling, Packaging and containers, Wine.

Drafting Information

The principal author of this document is James P. Ficaretta, FAA, Wine and Beer Branch, Bureau of Alcohol, Tobacco and Firearms.

Authority and Issuance

PART 4—[AMENDED]

27 CFR Part 4, Labeling and advertising of wine is amended as follows:

Par. 1. The authority citation for 27 CFR Part 4 continues to read as follows:

Authority: 27 U.S.C. 205.

Par. 2. Section 4.39 is amended by revising paragraph (i) to read as follows:

§ 4.39 Prohibited practices.

* * * * *

(i) *Geographic brand names.*

(1) Except as provided in subparagraph 2, a brand name of viticultural significance may not be used unless the wine meets the appellation of origin requirements for the geographic area named.

(2) For brand names used in existing certificates of label approval issued prior to July 7, 1986.

(i) The wine shall meet the appellation of origin requirements for the geographic area named; or

(ii) The wine shall be labeled with an appellation of origin in accordance with § 4.34(b) as to location and size of type of either:

(A) A county or a viticultural area, if the brand name bears the name of a geographic area smaller than a state, or;

(B) A state, county or a viticultural area, if the brand name bears a state name; or

(iii) The wine shall be labeled with some other statement which the Director finds to be sufficient to dispel the impression that the geographic area suggested by the brand name is indicative of the origin of the wine.

(3) A name has viticultural significance when it is the name of a state or county (or the foreign equivalents), when approved as a viticultural area in Part 9 of this chapter, or by a foreign government, or when found to have viticultural significance by the Director.

* * * * *

§ 4.34 [Amended]

Par. 3. Section 4.34(b)(3) is amended by deleting the reference to "brand name" and "§ 4.39(i)".

Signed: March 14, 1986.

Stephen E. Higgins,
Director.

Approved; May 16, 1986.

Francis A. Keating II,
Assistant Secretary, (Enforcement and Operations).

(Filed by the Office of the Federal Register on June 4, 1986 8:45 am and published in the Federal Register for June 5, 1986, 51 F.R. 20480)

[illegible]

[illegible]

Approved [illegible]

[illegible]

[illegible]

(c) Proposed provisions.

[illegible]

[illegible]

PART 1 — [AMENDED]

[illegible]

IV

Legislation

Subpart A—Currently Enacted Legislation

Public Law 99-272*
S. Con. Res. 32
99th Congress
Approved: April 7, 1986

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SHORT TITLE

SECTION 1. This Act may be cited as the "Consolidated Omnibus Budget Reconciliation Act of 1985".

TABLE OF CONTENTS

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Title XIII. Revenues, trade and related programs.

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TITLE XIII—REVENUES, TRADE, AND RELATED PROGRAMS

* * * * *

Subtitle B—General Revenue Provisions

SEC. 13200. AMENDMENT OF 1954 CODE.

Except as otherwise expressly provided, whenever in this subtitle an amendment or repeal is expressed in terms of an amendment to, or repeal of, a section or other provision, the reference shall be considered to be made to a section or other provision of the Internal Revenue Code of 1954.

SEC. 13201. INCREASE IN TAX ON CIGARETTES MADE PERMANENT.

(a) Subsection (c) of section 283 of the Tax Equity and Fiscal Responsibility Act of 1982 (relating to increase in tax on cigarettes) is amended by striking out all that follows "December 31, 1982" and inserting in lieu thereof a period.

(b) For purposes of all Federal and State laws, the amendment made by subsection (a) shall be treated as having taken effect on March 14, 1986.

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* Floor amendment on tobacco. No Committee reports on tobacco.

SEC. 13202. TAX ON SMOKELESS TOBACCO.

(a) In General.—Section 5701 (relating to rate of tax) is amended by redesignating subsection (e) as subsection (f) and by inserting after subsection (d) the following new subsection:

"(e) Smokeless Tobacco.—On smokeless tobacco, manufactured in or imported into the United States, there shall be imposed the following taxes:

"(1) Snuff.—On snuff, 24 cents per pound and a proportionate tax at the like rate on all fractional parts of a pound.

"(2) Chewing Tobacco.—On chewing tobacco, 8 cents per pound and a proportionate tax at the like rate on all fractional parts of a pound".

(b) Conforming Amendments.—

(1) The heading of chapter 52 is amended by inserting "SMOKELESS TOBACCO," after "CIGARETTES,".

(2) Section 5702(c) (defining tobacco products) is amended by striking out "and cigarettes" and inserting in lieu thereof ", cigarettes, and smokeless tobacco".

(3) Section 5702(d) (defining manufacturers of tobacco products) is amended by striking out "cigars or cigarettes" each place it appears and inserting in lieu thereof "cigars, cigarettes, or smokeless tobacco".

(4) Section 5702 is amended by adding at the end thereof the following new subsection:

"(n) Definitions Relating to Smokeless Tobacco.—

(1) Smokeless Tobacco.—The term 'smokeless tobacco' means any snuff or chewing tobacco.

"(2) Snuff.—The term 'snuff' means any finely cut, ground, or powdered tobacco that is not intended to be smoked.

"(3) Chewing Tobacco.—The term 'chewing tobacco' means any leaf tobacco that is not intended to be smoked.".

(c) Effective Date.—

(1) In General.—The amendments made by this section shall apply to smokeless tobacco removed after June 30, 1986.

(2) Transitional Rule.—Any person who—

(A) on the date of the enactment of this Act, is engaged in business as a manufacturer of smokeless tobacco, and

(B) before July 1, 1986, submits an application under subchapter B of chapter 52 of the Internal Revenue Code of 1954 to engage in such business,

may, notwithstanding such subchapter B, continue to engage in such business pending final action on such application. Pending such final action, all provisions of chapter 52 of such Code shall apply to such applicant in the same manner and to the same extent as if such applicant were a holder of a permit to manufacture smokeless tobacco under such chapter 52.

* * * * *

V

Administrative Matters

Subpart C—Treasury Department Orders and Delegation Orders

Delegation Order ATF O 1100.85B

Delegation to the Associate Director (Compliance Operations) of Authorities of the Director in 27 CFR Part 170, Miscellaneous Liquor Regulations

1. *Purpose.* This order delegates certain authorities of the Director to the Associate Director (Compliance Operations) and permits redelegation to other Compliance Operations' personnel.

2. *Cancellation.* ATF O 1100.85A, Delegation Order—Delegation To The Associate Director (Compliance Operations) Of Authorities Of The Director In 27 CFR Part 170, Miscellaneous Liquor Regulations, dated April 30, 1984, and ATF O 1100.92, Delegation Order—Delegation To The Assistant Director (Regulatory Enforcement) Of Authorities Of The Director In 27 CFR Part 196, Stills, dated July 24, 1978, are canceled.

3. *Background.* Under current regulations, the Director has authority to take final action on matters relating to miscellaneous liquor provisions. We have determined that certain of these authorities should, in the interest of efficiency, be delegated to a lower organizational level.

4. *Delegations.* Under the authority vested in the Director, Bureau of Alcohol, Tobacco and Firearms, by the Treasury Department Order No. 221, dated June 6, 1972, and by 26 CFR 301.7701-9, authority to take final action on the following matters is delegated to the Associate Director (Compliance Operations):

a. To prescribe all forms required by Subpart B of 27 CFR Part 170, under 27 CFR 170.22.

b. To prescribe all forms required by Subpart C of 27 CFR Part 170, under 27 CFR 170.43.

c. To prescribe all forms required by Subpart O of 27 CFR Part 170, under 27 CFR 170.302.

d. To request manufacturers to submit, or to receive from manufacturers, formulas for and samples of products for examination to verify claims of exemption from qualification requirements, under 27 CFR 170.613(b).

e. To approve changes of formulas which render products unfit for beverage use, under 27 CFR 170.615.

f. To declare other products to be unfit for use for beverage purposes, under 27 CFR 170.617(a), and 27 CFR 170.618.

g. To approve formulas and processes described on ATF F 5120.29, Formula and Process for Wine, and to require the submission of samples of the materials used in rendering wine or wine products unfit for beverage use, under 27 CFR 170.686.

5. *Coordination with other offices.* To complete the action in paragraphs 4d through 4g above, coordination will be made, as deemed necessary, with the Director, Office of Laboratory Services.

6. *Redelegation.*

a. The authorities in paragraphs 4a, 4b, and 4c above may be redelegated to personnel in Bureau Headquarters not lower than the position of branch chief.

b. The authorities in paragraphs 4d through 4g above may be redelegated to personnel in Bureau Headquarters not lower than the position of ATF specialist.

7. *For Information Contact.* Sharon K. Hendee, Procedures Branch, 1200 Pennsylvania Avenue, NW, Washington, DC 20226 (202) 566-7602.

8. *Effective Date.* This delegation order becomes effective on March 26, 1986.

Approved: March 18, 1986.

W.T. Drake,
Acting Director.

(Filed by the Office of the Federal Register on March 25, 1986 8:45 am and published in the Federal Register for March 26, 1986, 51 F.R. 10489)

VI

Announcements

Announcement 86-16

Major Disaster Areas Proclaimed by the President

The President has determined that certain areas of the United States were adversely affected by disasters of sufficient magnitude to warrant Federal assistance under the Disaster Relief Act of 1974. The specific areas adversely affected as identified by the Administrator, Federal Emergency Management Agency (FEMA) are listed below.

Persons in the affected areas holding for sale alcoholic beverages, cigars, cigarettes, or cigarette papers or tubes, which were lost, rendered unmarketable or condemned by a duly authorized official by reason of these disasters may be paid an amount equal to the internal revenue taxes and customs duties paid on such products, as provided in 26 U.S.C. 5064 and 5708. Claims for such payments should be filed with the Regional Director (Compliance) Bureau of Alcohol, Tobacco and Firearms, for the ATF region in which the alcoholic beverages, cigarettes, etc., were held for sale. Claims may be allowed only if filed within six months after the date the FEMA identifies the specific disaster area.

PENNSYLVANIA—Declared June 5, 1986
Type of Disaster: Severe Storms and floods on May 30, 1986
COUNTY: Allegheny
TEXAS—Declared on April 23, 1986
Type of Disaster: Tornado
COUNTY: Nolan

Announcement 86—17

Offers in Compromise

ATF has accepted offers in compromise from the following wholesalers and importers:

Royal Beverage Co., Inc.
Los Angeles, CA
$1,000
South San Francisco, CA
$1,500

JFC International, Inc.
So. San Francisco, CA
$2,500
Brooklyn, NY
$1,500
Los Angeles, CA
$2,000

K & M Imports
Seattle, WA
$2,000

Tokiwa Food Corporation
Los Angeles, CA
$1,300

These offers were accepted to compromise liabilities arising from violations of 27 U.S.C. 205(b)(3). The proponents induced retailers to purchase sake from them by providing sake warmers as inducements. These inducements resulted in the exclusion of competitor's products that traveled in interstate or foreign commerce.

Announcement 86—18

Offer in Compromise

An offer in compromise of $1,750 was accepted from Lone Star Company, Inc., Dallas, Texas for violation of 27 U.S.C. 205(b)(3). The proponent gave away portable refrigerators to retailers who agreed to purchase Club Cocktails to the exclusion of like products sold by others in interstate commerce.

Announcement 86—19

Tax Violation

ATF has accepted an offer in compromise of $350,000 from National Distillers and Chemical Corporation for violation of 26 U.S.C. 5061. The violation occurred when the distilled spirits tax and wine tax involving six distilled spirits plants and one bonded winery were not timely paid.

Announcement 86—20

Basic Permit Violation

ATF has accepted an offer in compromise of $2,000 from Loron R. Compton of Flint, Michigan for criminal liabilities incurred through violation of 27 U.S.C. 203(c)(1). The proponent engaged in business without obtaining a wholesaler's basic permit during the period of August 24, 1983 through June 30, 1984.

Announcement 86—21

Offer in Compromise

An offer in compromise of $30,000 was accepted by ATF from The Stroh Brewery Company, Detroit, Michigan. The offer was accepted to compromise violations of 27 U.S.C. 205(a), 205(b)(3) and 205(b)(4). The Stroh Brewery Company directly or indirectly required or induced retail malt beverage dealers to purchase Stroh products to the exclusion of competitor's products sold or offered for sale in interstate or foreign commerce. These inducements included sponsoring a series of races and paying a sponsorship fee to support a softball team.

Announcement 86—22

Offer in Compromise

ATF has accepted an offer of $15,000 from Ideal Distributing Co., Inc., in Clarksville, Tennessee. Violations of 27 U.S.C. 205(a), 205(b)(2), (b)(3), (b)(4), (b)(5) and (b)(6) and 205(c)(1), (c)(2) included the following: acquiring an interest in real or personal property used by a retailer in the conduct of its business; furnishing equipment and other goods and services to retailers; paying or crediting the retailer for any advertising display or distribution service; guaranteeing a loan of a retailer; extending the retailer credit period; offering or giving a bonus, premium or compensation to an officer or employee or representative of the trade buyer; requiring a retailer through a third party to buy exclusively from the proponent; and paying for items intended for consumers.

Announcement 86–23

Offer in Compromise

ATF has accepted an offer of $5,000 from Cardett Distributing Co., Inc., Clarksville, Tennessee for violations of 27 U.S.C. 205(a) and 205(b)(3), by paying for equipment repair for retailers; by paying or crediting the retailer for any advertising display or distribution service; by requiring through a third party, that a retailer buy products exclusively from the proponent; and by paying for items intended for consumers.

Announcement 86–24

Offer in Compromise

An offer in compromise of $15,000 was accepted by ATF from Glazer's Wholesale Drug Company, Inc., Dallas, Texas. The offer was accepted to compromise liabilities arising from violations of 26 U.S.C. 5114, 5146(a) and 27 U.S.C. 205(b)(3) for failure to properly record replacement of breakage; inaccurate disposition information on liquor invoices, and false disposition information on breakage and loss records. Also, records were not being maintained for the required three-year period. Glazer induced various retailers to purchase Ameretto di Saronno by giving away ice cream freezers and clocks with particular quantity purchases. They also induced retailers to purchase Canadian Mist by giving away chairs and picnic tables with particular quantity purchases. These inducements were used to such an extent as to substantially restrain transactions of competitive products in interstate commerce.

Announcement 86–25

Offer in Compromise

ATF has accepted an offer in compromise of $3,000 from Great State Beverages, Inc., Manchester, New Hampshire. The offer was accepted to compromise civil and criminal liabilities incurred through violations of 27 U.S.C. 205(a), 205(b)(3), 205(b)(6) and 205(d). The proponent required a retail establishment to function as an exclusive outlet and to purchase only their malt beverage products during a specified promotion. Furthermore, the permittee sold malt beverages to the retailer on consignment. These actions resulted in the exclusion of like products sold by others in interstate commerce.

Announcement 86–26

Offer in Compromise

Block Distributing Co., Inc., dba, Allied Beverage Co., San Antonio, Texas was found to be in violation of 27 U.S.C. 205(b)(3). The permittee induced retailers to purchase Jack Daniels whiskey by furnishing Jack Daniels pocket watches. These inducements resulted in the exclusion of similar products sold by other retailers in interstate commerce. ATF accepted an offer in compromise of $2,000.

Announcement 86—27

Offer in Compromise

ATF has accepted an offer in compromise of $1400 from Lone Star Company, Austin, Texas. The proponent violated 27 U.S.C. 205(b)(7) by requiring seven retailers to purchase a quota of Sauza Tres Generaciones Commemerative Tequila in order to obtain Sauza Tres Generaciones Tequila.

Announcement 86—28

Offer in Compromise

An offer in compromise of $500 was accepted from Trans Meridian, Inc., San Pedro, California. The permittee failed to timely file their distilled spirits tax return in violation of 26 U.S.C. 5061.

Announcement 86—29

Unified Agenda of Federal Regulations

ATF published its Unified Agenda of Federal Regulations in the Federal Register of April 21, 1986. The Unified Agenda is designed to give the public notice of ATF regulatory activities which will be under development and review during the period of April 1986 through October 1986. Information concerning specific items appearing in the following Unified Agenda should be directed to the appropriate contact person indicated. The next Unified Agenda will be published in the Federal Register for October 1986.

TABLE OF ABBREVIATIONS

ABBREVIATION	MEANING
ANPRM	Advance notice of proposed rulemaking
ATF	Bureau of Alcohol, Tobacco and Firearms
CFR	Code of Federal Regulations
DSP	Distilled Spirits Plant
E.O.	Executive Order
FR	Federal Register
FAA Act	Federal Alcohol Administration Act
NPRM	Notice of proposed rulemaking
OFR	Office of the Federal Register
OMB	Office of Management and Budget
Pub. L.	Public Law
T.D.	Treasury Decision
T.D. with N	(Temporary) Treasury Decision with Notice
T.D. w/o N	Treasury Decision without Notice
Treasury	Department of the Treasury

Current and Projected Rulemakings

Proposed Rule Stage

ALCOHOL

IMPLEMENTATION OF THE "WINE IMPACT BILL"

Significance: Agency Priority

Legal Authority: 26 USC 5010

CFR Citation: 27 CFR 19.11; 27 CFR 19.37 to 19.40; 27 CFR 19.42; 27 CFR 19.346; 27 CFR 19.372; 27 CFR 19.402; 27 CFR 19.505; 27 CFR 19.566; 27 CFR 19.681; 27 CFR 19.748; 27 CFR 19.763; 27 CFR 19.764; 27 CFR 19.778 to 19.780; 27 CFR 170.681 to 170.691; 27 CFR 197.105; . . .

Legal Deadline: None

Abstract: Restores the tax system which existed for distilled spirits products containing wine or alcoholic flavoring materials prior to the enactment of the Distilled Spirits Tax Revision Act of 1979; also permits spirits bottled for industrial purposes to be transferred in bond between distilled spirits plants.

Timetable:

Action	Date	FR Cite
NPRM	07/00/86	

Small Entity: No

Agency Contact: Jim Stephens, ATF Coordinator, Department of the Treasury, Bureau of Alcohol, Tobacco and Firearms, 1200 Pennsylvania Avenue, NW, Washington, DC 20226, 202 566-7531

AMERICAN VITICULTURAL AREAS

Significance: Agency Priority

Legal Authority: 27 USC 205

CFR Citation: 27 CFR 9

Legal Deadline: None

Abstract: Establishes grape-growing regions as American viticultural areas for purposes of labeling and advertising of wine.

Supplemental Timetable:

Alexander Valley, CA—Amendment (contact Michael Breen)
    NPRM 04/00/86
Arkansas Mountain, AR (contact Steve Simon)
    NPRM 04/00/86
Armendaris, NM (contact Ed Reisman)
    NPRM 09/00/86
Central Coast, CA (contact John Linthicum)
    NPRM 07/11/84 (49 FR 28257)
    NPRM Comment Period End 09/10/84
    Final Action 10/24/85 (50 FR 43128)
El Dorado, CA—Amendment (contact Jim Hunt)
    NPRM 04/00/86
Kanawha River Valley, WVA (contact John Linthicum)
    NPRM 01/21/86 (51 FR 2728)
    NPRM Comment Period End 02/20/86
    Final Action 09/00/86
Lodi, CA (contact Lori Weins)
    NPRM 07/12/85 (50 FR 28409)
    NPRM Comment Period End 08/26/85
    Final Action 02/13/86
Mimbres Valley, NM (contact Ed Reisman)
    NPRM 02/12/85 (50 FR 5775)
    NPRM Comment Period End 03/29/85
    Final Action 11/21/85 (50 FR 48070)
Monticello, VA—Amendment (contact Jim Hunt)
    NPRM 04/00/86

North Fork of Long Island, NY (contact Ed Reisman)
NPRM 03/00/86
Northern Neck, VA (contact Ed Reisman)
NPRM 09/17/85 (50 FR 37692)
NPRM Comment Period End 11/01/85
Final Action 08/00/86
Ozark Highlands, MO (contact Steve Simon)
NPRM 06/00/86
Ozark Mountains, AR, OK, MO (contact Steve Simon)
NPRM 09/17/85 (50 FR 37696)
NPRM Comment Period End 11/01/85
Final Action 09/00/86
San Benito, CA (contact Steve Simon)
NPRM 06/00/86
San Lucas, CA (contact Mike Breen)
NPRM 06/00/86
Santa Clara Valley, CA (contact Ed Reisman)
NPRM 09/00/86
South Coast, CA (contact Steve Simon)
NPRM 04/19/85 (50 FR 15588)
NPRM Comment Period End 06/03/85
Final Action 11/21/85 (50 FR 48083)
Stags Leap District, CA (contact Jim Ficaretta)
NPRM 10/00/86
Temecula, CA - Amendment (contact John Linthicum)
NPRM 10/10/85 (50 FR 41364)
NPRM Comment Period End 11/12/85
Final Action 01/08/86 (51 FR 749)

Small Entity: No

Agency Contact: See supplemental timetable, American Viticultural Areas, Department of the Treasury, Bureau of Alcohol, Tobacco and Firearms, 1200 Pennsylvania Avenue, NW, Washington, DC 20226, 202 566-7626

STANDARD OF IDENTITY FOR VODKA

Significance: Agency Priority

Legal Authority: 27 USC 205

CFR Citation: 27 CFR 5.22

Legal Deadline: None

Abstract: Considers clarifying the standard of identity for vodka by revoking Revenue Ruling 56-98 which permits the use of small quantities of sugar or citric acid in vodka; or would propose a new class and type of vodka which contains trace amounts of sugar or citric acid.

Timetable:

Action	Date	FR Cite
ANPRM	01/11/82	47 FR 1148
ANPRM Comment Period End	07/11/82	
NPRM	04/00/86	

Small Entity: No

Agency Contact: John Linthicum, ATF Coordinator, Department of the Treasury, Bureau of Alcohol, Tobacco and Firearms, 1200 Pennsylvania Avenue, NW, Washington, DC 20226, 202 566-7626

RECODIFICATION OF 27 CFR PART 4

Significance: Agency Priority

Legal Authority: 27 USC 205

Legal Deadline: None

CFR Citation: 27 CFR 4

Abstract: To revise the wine labeling and advertising regulations; where applicable, to incorporate production regulations; and due to statutory amendments requested, may result in a legislative submission.

Timetable:

Action	Date	FR Cite
NPRM	12/00/86	

Small Entity: No

Additional Information: Additional Agency Contact: Ed Reisman

Agency Contact: James Hunt, ATF Coordinator, Department of the Treasury, Bureau of Alcohol, Tobacco and Firearms, 1200 Pennsylvania Avenue, NW, Washington, DC 20226, 202 566-7626

NONBEVERAGE DRAWBACK

Significance: Agency Priority

Legal Authority: 26 USC 5131 et seq

CFR Citation: 27 CFR 197

Legal Deadline: None

Abstract: To update, clarify, simplify, and recodify the regulations relating to drawback of tax on distilled spirits used in the manufacture of nonbeverage products.

Timetable:

Action	Date	FR Cite
NPRM	09/00/86	

Small Entity: Yes

Additional Information: SMALL BUSINESSES CONT: This regulation affects approximately 500 entities.

Agency Contact: **Steve Simon,** ATF Specialist, Department of the Treasury, Bureau of Alcohol, Tobacco and Firearms, 1200 Pennsylvania Avenue, NW, Washington, DC 20226, **202 566-7626**

GRAPE HARVEST LABELING FOR WINE

Significance: Agency Priority

Legal Authority: 27 USC 205E; 27 USC 205F

CFR Citation: 27 CFR 4.29

Legal Deadline: None

Abstract: Late harvest designations, based on the Brix (percent by weight) level of the grapes at harvest would indicate to consumers that the grapes used to produce the wine were left on the vine for express purpose of increasing the sugar content. The designations would indicate additional techniques and processes were used in the production of the wine.

Timetable:

Action	Date	FR Cite
NPRM	09/00/86	

Small Entity: No

Agency Contact: **Michael Breen,** ATF Coordinator, Department of the Treasury, Bureau of Alcohol, Tobacco and Firearms, 1200 Pennsylvania Avenue, NW, Washington, DC 20226, **202 566-7626**

ESTATE BOTTLED

Significance: Agency Priority

Legal Authority: 27 USC 205

CFR Citation: 27 CFR 4.26

Legal Deadline: None

Abstract: To redefine estate bottled requirements and provide for additional terms to provide requirements for imported wine.

Timetable:

Action	Date	FR Cite
NPRM	09/00/86	

Small Entity: No

Agency Contact: John Linthicum, ATF Coordinator, Department of the Treasury, Bureau of Alcohol, Tobacco and Firearms, 1200 Pennsylvania Avenue, NW, Washington, DC 20226, **202 566-7626**

REDUCED PROOF DISTILLED SPIRITS PRODUCTS

Significance: Agency Priority

Legal Authority: 27 USC 205

CFR Citation: 27 CFR 5.22

Legal Deadline: None

Abstract: ATF is proposing to amend the regulations to provide for reduced proof distilled spirits products similar to "light beer," "light wine" and similar "light products which have become increasingly popular with consumers in recent years. Since 1968, the words "light whisky" have referred to whisky produced by two processes which are different from other American whiskies and the term "light" does not refer to lower alcohol content. However, ATF is considering abolishing "light whisky" as a standard of identity, so that the word "light" can refer only to reduced alcohol content. Unlike wine and beer, distilled spirits products are usually sold at more than one bottling proof (e.g. whisky is frequently sold at 80 degrees, 86 degrees, and 100 degrees proof) with the difference in proof being the only distinction between products which are otherwise identical. Therefore, ATF must carefully consider labeling to ensure there exists a clear cut difference in the minds of consumers between products at minimum bottling proof or above minimum bottling proof and those which are reduced in proof.

Timetable:

Action	Date	FR Cite
ANPRM	08/04/83	48 FR 35460
ANPRM Comment Period Extension	10/28/83	48 FR 49870

Timetable:

Action	Date	FR Cite
ANPRM Comment Period End	11/02/83	48 FR 35460
ANPRM Extended Comment Period Ends	01/31/84	
ANPRM Comment Period Extension	01/30/85	50 FR 4236
ANPRM Extended Comment Period Ends	04/15/85	
ANPRM Comment Period Reopened	01/13/86	51 FR 1393
ANPRM Reopened Comment Period Ends	04/14/86	
NPRM	00/00/00	

Small Entity: No

Government Levels Affected: Federal

Agency Contact: John Linthicum, ATF Coordinator, Department of the Treasury, Bureau of Alcohol, Tobacco and Firearms, 1200 Pennsylvania Avenue, NW, Washington, DC 20226, **202 566-7626**

RECODIFICATION OF WINE REGULATIONS (SUBPARTS A TO O)

Significance: Agency Priority

Legal Authority: 26 USC 7805

CFR Citation: 27 CFR 240.180 to 240.400

Legal Deadline: None

Abstract: To update, simplify, and clarify regulations relating to wine; and to incorporate ATF rulings into the Regulations.

Timetable:

Action	Date	FR Cite
NPRM	06/00/86	

Small Entity: No

Agency Contact: James Hunt, ATF Coordinator, Department of the Treasury, Bureau of Alcohol, Tobacco and Firearms, 1200 Pennsylvania Avenue, NW, Washington, DC 20226, **202 566-7626**

LABELING AND ADVERTISING OF WINE, DISTILLED SPIRITS AND MALT BEVERAGES; USE OF THE WORD LIGHT (LITE)

Significance: Agency Priority

Legal Authority: 27 USC 205e to f

CFR Citation: 27 CFR 4; 27 CFR 5; 27 CFR 7

Legal Deadline: None

Abstract: "Light (Lite)" was addressed to a limited extent in Notice No. 362 (45 FR 83530). However, subsequent to its publication ATF was petitioned by the Center for Science in the Public Interest (CSPI), requesting mandatory caloric labeling on all alcohol beverages, as well as the establishment of upper limits on calories in products labeled as "light (lite)." Comments will be requested on CSPI's petition as well as other issues involving use of the term "light (lite)."

Timetable:

Action	Date	FR Cite
Next Action Undetermined		

Small Entity: No

Additional Information: ADDITIONAL AGENCY CONTACT: Charles Bacon.

Agency Contact: James Ficaretta, ATF Coordinator, Department of the Treasury, Bureau of Alcohol, Tobacco and Firearms, 1200 Pennsylvania Avenue, NW, Washington, DC 20226, **202 566-7626**

LABELING AND ADVERTISING OF WINE, DISTILLED SPIRITS AND MALT BEVERAGES; APPEARANCE OF ATHLETES AND DEPICTION OF ATHLETIC EVENTS

Significance: Agency Priority

Legal Authority: 27 USC 205e to f

CFR Citation: 27 CFR 4; 27 CFR 5; 27 CFR 7

Legal Deadline: None

Abstract: Discusses present policy on prohibition of active athletes and requests comments on whether the policy should be relaxed, retained, expanded to include all celebrities. On athletic events, comments are requested if the present prohibition should be expanded to include any athletic event, regardless of when the participants are shown consuming, or preparing to consume, alcohol beverages.

Timetable:

Action	Date	FR Cite

Next Action Undetermined

Small Entity: No

Agency Contact: James Ficaretta, ATF Coordinator, Department of the Treasury, Bureau of Alcohol, Tobacco and Firearms, 1200 Pennsylvania Avenue, NW, Washington, DC 20226, **202 566-7626**

REPLACEMENT OF PROOF STATEMENT WITH PERCENTAGE-OF-ALCOHOL-BY-VOLUME STATEMENT ON DISTILLED SPIRITS LABELS

Significance: Agency Priority

Legal Authority: 26 USC 5206; 26 USC 5301; 27 USC 205(e)

CFR Citation: 27 CFR 5.37; 27 CFR 19.643

Legal Deadline: None

Abstract: Joseph E. Seagram and Sons, Inc. has petitioned ATF to require the statement of alcohol content on labels of distilled spirits to be stated in percentage-alcohol-by-volume instead of proof.

Timetable:

Action	Date	FR Cite
NPRM	01 24/86	51 FR 1393
NPRM Comment Period End	05/27/86	

Small Entity: No

Agency Contact: John Linthicum, ATF Coordinator, Department of the Treasury, Bureau of Alcohol, Tobacco and Firearms, 1200 Pennsylvania Avenue, NW, Washington, DC 20226, **202 566-7626**

WINEGRAPE VARIETAL DESIGNATIONS

Significance: Agency Priority

Legal Authority: 27 USC 205(e)

CFR Citation: 27 CFR 4

Legal Deadline: None

Abstract: This proposal would establish standardized lists of winegrape varietal names which may be used on a wine label. In addition we are proposing a method by which new names may be added to the list. These standardized lists will assure more accurate and truthful identification of the wine.

Timetable:

Action	Date	FR Cite
NPRM	02/04/86	51 FR 4392
NPRM Comment Period End	04/07/86	

Small Entity: No

Agency Contact: Charles Bacon, ATF Coordinator, Department of the Treasury, Bureau of Alcohol, Tobacco and Firearms, 1200 Pennsylvania Avenue, NW, Washington, DC 20226, **202 566-7595**

RECODIFICATION OF 27 CFR PART 250 AS 27 CFR PART 26

Significance: Agency Priority

Legal Authority: 26 USC 7651 to 7652; PL 85-859; 26 USC 5314; 26 USC 7805

CFR Citation: 27 CFR 250

Legal Deadline: None

Abstract: As part of the recodification of Part 250, we plan to simplify, consolidate and or eliminate as many sections of regulations as possible placing particular emphasis on reducing the number of recordkeeping requirements, forms, and customs responsibilities. Wherever possible, we plan to utilize a proprietor's commercial record in lieu of requiring the proprietor to submit public use forms. These changes to Part 250 should considerably reduce the burden hours on industry.

Timetable:

Action	Date	FR Cite
NPRM	09/00/86	

Small Entity: No

Agency Contact: Jim Stephens, ATF Coordinator, Department of the Treasury, Bureau of Alcohol, Tobacco and Firearms, 1200 Pennsylvania Avenue, NW, Washington, DC 20226, **202 566-7531**

WINEMAKING TERMINOLOGY

Significance: Agency Priority

Legal Authority: 27 USC 205(e)

CFR Citation: 27 CFR 4.35

Legal Deadline: None

Abstract: ATF is proposing to define words denoting winemaking operations for use on wine labels in conjunction with the name and address of the bottler. This project partially fulfills the requirements of the court order in Wawskiewicz v. Department of the Treasury, 480 F. Supp. 739 (D.D.C. 1979), aff'd. in part, rev'd in part, 670 F.2d 296.

Timetable:

Action	Date	FR Cite
NPRM	06/00/86	

Small Entity: No

Agency Contact: John Linthicum, ATF Coordinator, Department of the Treasury, Bureau of Alcohol, Tobacco and Firearms, 1200 Pennsylvania Avenue, NW, Washington, DC 20226, **202 566-7626**

• NON-GENERIC DESIGNATIONS OF GRAPE WINE HAVING GEOGRAPHICAL SIGNIFICANCE

Significance: Agency Priority

Legal Authority: 27 USC 205

CFR Citation: 27 CFR 4.24

Legal Deadline: None

Abstract: This proposal expands the list of names officially recognized under 27 CFR Part 4, as being non-generic for the purposes of labeling and advertising of wine. The proposal is the result of petitions from numerous foreign countries for ATF recognition of non-generic wine designations which, in their view, denote distinctive national products. This proposal is also an outgrowth of one of the commitments made by the United States, in the Exchange of Letters of July 26, 1983 with the Commission of the European Communities, to work within the regulatory framework of 27 CFR Part 4, to prevent erosion of non-generic designations of geographic significance. For practical reasons it is being proposed that only "examples" of non-generic designations be listed in Part 4 while a complete list of all non-generic designations be listed in a new Part 12.

Timetable:

Action	Date	FR Cite
NPRM	07/00/86	

Small Entity: No

Agency Contact: John Kodadek, ATF Specialist, Department of the Treasury, Bureau of Alcohol, Tobacco and Firearms, 1200 Pennsylvania Avenue, NW, Washington, DC 20226, **202 535-6245**

FIREARMS

FIREWORKS REGULATIONS

Significance: Agency Priority

Legal Authority: 18 USC Chapter 40

CFR Citation: 27 CFR 55

Legal Deadline: None

Abstract: Information gathering on Safe Handling of Explosive Materials in the Fireworks industry is necessary due to accidental explosions causing death. Injuries and property damage have occurred at fireworks manufacturing and assembling plants. Damage has been in the millions of dollars and some regulatory changes are needed. This notice to gather information is to determine changes needed and potential costs.

Timetable:

Action	Date	FR Cite
General Notice	06/08/84	49 FR 23872
NPRM	06/00/86	

Small Entity: No

Agency Contact: Art Cunn, ATF Specialist, Department of the Treasury, Bureau of Alcohol, Tobacco and Firearms, 1200 Pennsylvania Avenue, NW, Washington, DC 20226, **202 566-7591**

TOBACCO PRODUCTS MANUFACTURER'S IDENTIFICATION ON TOBACCO PRODUCTS PACKAGES

Significance: Agency Priority

Legal Authority: 26 USC 5723

CFR Citation: 27 CFR 270.11; 27 CFR 270.212; 27 CFR 275.163; 27 CFR 275.170; 27 CFR 275.172; 27 CFR 275.174; 27 CFR 290.11; 27 CFR 290.181; 27 CFR 290.185; 27 CFR 290.241 to 290.267; 27 CFR 295.42

Legal Deadline: None

Abstract: To liberalize requirements relating to manufacturer identification on tobacco products packages and to make other miscellaneous changes.

Timetable:

Action	Date	FR Cite
NPRM	07/00/86	

Small Entity: No

Agency Contact: Cliff Mullen, ATF Specialist, Department of the Treasury, Bureau of Alcohol, Tobacco and Firearms, 1200 Pennsylvania Avenue, NW, Washington, DC 20226, **202 566-7531**

27 CFR PART 285, MANUFACTURE OF CIGARETTE PAPERS AND TUBES

Significance: Agency Priority

Legal Authority: 26 USC 7805 (68A Stat 917)

CFR Citation: 27 CFR 285

Legal Deadline: None

Abstract: To reduce or eliminate administrative and recordkeeping burdens under 27 CFR Part 285.

Timetable:

Action	Date	FR Cite
ANPRM	09/01/84	
ANPRM Comment Period End	10/02/84	
NPRM	08/00/86	

Small Entity: Undetermined

Agency Contact: Cliff Mullen, ATF Specialist, Department of the Treasury, Bureau of Alcohol, Tobacco and Firearms, 1200 Pennsylvania Avenue, NW Washington, DC 20226, **202 566-7531**

Final Rule Stage

ALCOHOL

REPORTING TAXES DUE TO THE GOVERNMENTS OF PUERTO RICO AND THE VIRGIN ISLANDS

Significance: Agency Priority

Legal Authority: 26 USC 5555; 26 USC 5207

CFR Citation: 27 CFR 19.377

Legal Deadline: None

Abstract: Changes the reporting requirements for most Puerto Rican and Virgin Islands spirits bottled at domestic distilled spirits plants. The reporting requirement will remain as a line item on the proprietor's monthly reports. However, the time for recording tax determination of insular spirits will change from the time these spirits enter the processing account to the time of tax determination.

Timetable:

Action	Date	FR Cite
NPRM	04/13/81	46 FR 21624
Amended NPRM	02/14/85	50 FR 6200
Final Action	07/00/86	

Small Entity: No

Agency Contact: Jim Stephens, ATF Coordinator, Department of the Treasury, Bureau of Alcohol, Tobacco and Firearms, 1200 Pennsylvania Avenue, NW, Washington, DC 20226, **202 566-7531**

RECODIFICATION OF BEER REGULATIONS

Significance: Agency Priority

Legal Authority: 26 USC 5051 et seq; 26 USC 5401 et seq

CFR Citation: 27 CFR 245

Legal Deadline: None

Abstract: To simplify and clarify regulations relating to the production and taxpayment of beer; to simplify and reduce paperwork and recordkeeping requirements imposed on industry; and to reflect technological advances in the beer industry since the regulations were last revised.

Timetable:

Action	Date	FR Cite
NPRM	02/03/83	48 FR 4803
NPRM Comment Period End	05/04/83	
Final Action	03/00/86	

Small Entity: No

Agency Contact: Robert White, ATF Coordinator, Department of the Treasury, Bureau of Alcohol, Tobacco and Firearms, 1200 Pennsylvania Avenue, NW, Washington, DC 20226, **202 566-7626**

CHANGE IN STANDARD OF IDENTITY FOR STRAIGHT WHISKIES OF THE SAME TYPE

Significance: Agency Priority

Legal Authority: 27 USC 205

CFR Citation: 27 CFR 5.22(b)(1)(iii); 27 CFR 19.346(b)

Legal Deadline: None

Abstract: Current regulations do not provide for distilled spirits plant proprietors to mingle and still designate as straight whiskies of the same type produced at different distilleries or produced by different distillers. This project will allow such whiskies to be labeled as straight as long as the whiskies are produced within the same state. Their only alternative is to leave the regulations as they are and to not allow such whiskies to be mingled and designated as straight. We do not anticipate any extra costs to result from this change in regulations. This change will result in greater flexibility for distilled spirits plant proprietors.

Timetable:

Action	Date	FR Cite
NPRM	05/08/84	49 FR 19333
NPRM Comment Period End	07/06/84	
NPRM Comment Period Extended	07/13/84	49 FR 30538
Extended NPRM Comment Period Ends	10/29/84	
Final Action	05/00/86	

Small Entity: No

Agency Contact: Robert White, ATF Coordinator, Department of the Treasury, Bureau of Alcohol, Tobacco and Firearms, 1200 Pennsylvania Avenue, NW, Washington, DC 20226, 202 566-7531

GEOGRAPHIC BRAND NAMES

Significance: Agency Priority

Legal Authority: 27 USC 205

CFR Citation: 27 CFR 4.39(i)

Legal Deadline: None

Abstract: To propose alternatives to the present regulation which requires that the word "brand" appear in the same size type as the brand name itself.

Timetable:

Action	Data	FR Cite
NPRM	05/07/84	49 FR 19330
NPRM Comment Period End	07/06/84	
NPRM Comment Period Extended	07/13/84	49 FR 28417
NPRM Comment Period Extended	09/04/84	49 FR 34847
Extended NPRM Comment Period Ends	09/14/84	
NPRM Extended Comment Period Ends	01/02/85	
Final Action	06/00/86	

Small Entity: No

Agency Contact: Jim Ficaretta, ATF Coordinator, Department of the Treasury, Bureau of Alcohol, Tobacco and Firearms, 1200 Pennsylvania Avenue, NW, Washington, DC 20226, 202 566-7626

375 ML AND 500 ML CONTAINERS FOR DISTILLED SPIRITS

Significance: Agency Priority

Legal Authority: 26 USC 5301; 27 USC 205

CFR Citation: 27 CFR 5.47a

Legal Deadline: None

Abstract: To determine if both sizes should be standards of fill or whether the 375 ml size should replace the 500 ml size.

Timetable:

Action	Date	FR Cite
NPRM	09/23/83	48 FR 43346
NPRM Comment Period Extended	03/21/84	48 FR 10553
NPRM Comment Period End	03/23/84	
Extended Comment Period Ends	01/02/85	
Final Action	04/00/86	

Small Entity: No

Additional Information: ADDITIONAL AGENCY CONTACT: Jim Ficaretta

Agency Contact: Ed Reisman, ATF Specialist, Department of the Treasury, Bureau of Alcohol, Tobacco and Firearms, 1200 Pennsylvania Avenue, NW, Washington, DC 20226, 202 566-7626

CARIBBEAN BASIN ECONOMIC RECOVERY ACT

Significance: Agency Priority

Legal Authority: PL 98-67, Title II (Caribbean Basin Economic Recovery Act); 26 USC 7652

CFR Citation: 27 CFR 19.42; 27 CFR 19.377; 27 CFR 19.517; 27 CFR 250.1; 27 CFR 250.30; 27CFR 250.31; 27 CFR 250.35; 27 CFR 250.200

Legal Deadline: None

Abstract: Under current law (26 USC 7652), the excise taxes collected on all merchandise manufactured in Puerto Rico and the Virgin Islands, and shipped to the U.S., are deposited into the Treasury of either Puerto Rico or the Virgin Islands.

The Caribbean Basin Economic Recovery Act was passed to promote the economic revitalization of the Caribbean Basin area by removing the duty on certain merchandise from certified Caribbean Basin countries. In order to minimize any adverse effects this would have on Puerto Rico and the Virgin Islands, a provision was added to require that the excise taxes collected on all rum that is imported into the U.S. be deposited in the Treasuries of Puerto Rico and the Virgin Islands. This would be in addition to the amounts already transferred under 26 U.S.C. 7652(a) and (b).

Timetable:

Action	Date	FR Cite
NPRM	02/14/85	50 FR 6200
Final Action	04/00/86	

Small Entity: No

Agency Contact: Jim Stephens, ATF Coordinator, Department of the Treasury, Bureau of Alcohol, Tobacco and Firearms, 1200 Pennsylvania Avenue, NW, Washington, DC 20226, 202 566-7531

MATERIALS AND PROCESSES FOR THE PRODUCTION AND TREATMENT OF WINE

Significance: Agency Priority

Legal Authority: 27 USC 5382

CFR Citation: 27 CFR 240

Legal

Abstract: Updates, clarifies, and simplifies the regulations relating to the production and treatment of wine.

Timetable:

Action	Date	FR Cite
NPRM	09/24/84	49 FR 37527
NPRM Comment Period Extended	01/22/85	50 FR 2832
NPRM Comment Period End	01/23/85	
Extended NPRM Comment Period Ends	03/01/85	
Final Action	09/00/86	

Small Entity: No

Additional Information: This was formerly part of RIN 1512-AA12 Materials and Processes for the Production and Treatment of Wine.

Agency Contact: Mike Breen, ATF Coordinator, Department of the Treasury, Bureau of Alcohol, Tobacco and Firearms, 1200 Pennsylvania Avenue, NW, Washington, DC 20226, 202 566-7626

LISTING OF PRINCIPAL PLACE OF BUSINESS ON BEER LABELS

Signficance: Agency Priority

Legal Authority: 27 USC 205(e); 26 USC 5412

CFR Citation: 27 CFR 7.25; 27 CFR 25.142; 27 CFR 25.143

Legal Deadline: None

Abstract: This proposed rule would allow a brewer who operates more than one brewery to use a principal place of business as the address shown on labels in lieu of listing the actual place of production or showing all of the breweries operated by the brewer. This rule would benefit the industry by eliminating the need to prepare redesigned labels every time a brewery was bought, sold, built, or otherwise disposed of. It would benefit industry and government by reducing the numbers of labels submitted for approval under the Federal Alcohol Administration Act.

Timetable:

Action	Date	FR Cite
NPRM	10/15/85	50 FR 41701
Final Action	05/00/86	

Small Entity: No

Agency Contact: John Linthicum, ATF Coordinator, Department of the Treasury, Bureau of Alcohol, Tobacco and Firearms, 1200 Pennsylvania Avenue, NW, Washington, DC 20226, 202 566-7626

DISCLOSURE OF SULFITING AGENTS ON ALCOHOL BEVERAGE LABELS

Significance: Agency Priority

Legal Authority: 27 USC 205(c)

CFR Citation: 27 CFR 4; 27 CFR 5; 27 CFR 7

Legal Deadline: None

Abstract: The Food and Drug Administration has determined that Sulfites or Sulfiting Agents pose a risk to the health of some individuals. Based on this action, ATF is proposing to require the disclosure of sulfiting agents in the labeling of alcohol beverage products in which they are present at a level of 10 or more ppm. measured as total sulfur dioxide.

Timetable:

Action	Date	FR Cite
NPRM	06/24/85	50 FR 26001
NPRM Comment Period End	08/23/85	
NPRM Comment Period Extension	08/23/85	50 FR 43166
Final Action	06/00/86	

Small Entity: Yes

Additional Information: ADDITIONAL AGENCY CONTACT: Jim Ficaretta

Agency Contact: Mike Breen, ATF Coordinator, Department of the Treasury, Bureau of Alcohol, Tobacco and Firearms, 1200 Pennsylvania Avenue, NW, Washington, DC 20226, 202 566-7626

Completed Actions

DENATURED ALCOHOL-MEASUREMENT OF PROOF

Significance: Agency Priority

Legal Authority: 26 USC 7805 68A Stat. 917, as amended)

CFR Citation: 27 CFR 13.31

Legal Deadline: None

Abstract: The regulation will prescribe procedures for proofing industrial alcohol containing volatile or non-volatile specific gravity obscuring solids.

Timetable:

Action	Date	FR Cite
Withdrawn	01/24/86	

Small Entity: No

Agency Contact: Robert Petrangelo, ATF Coordinator, Department of the Treasury, Bureau of Alcohol, Tobacco and Firearms, 1200 Pennsylvania Avenue, NW, Washington, DC 20226, 202 566-7531

2½% ALCOHOL FLAVORING

Significance: Agency Priority

Legal Authority: 27 USC 205

CFR Citation: 27 CFR 5.22(h)(3); 27 CFR 5.22(h)(4); 27 CFR 5.22(i); 27 CFR 5.35; 27 CFR 5.42(b); 27 CFR 5.65(a)

Legal Deadline: None

Abstract: Ten standard of identity products will be held more closely to the class and type of spirits indicated by their designation.

The class and type of distilled spirits contained in certain other products will be disclosed in greater detail.

Misleading impressions created by the use of the term "Distilled" on distilled spirits products containing coloring, flavoring, or blending materials will be eliminated.

Timetable:

Action	Date	FR Cite
Withdrawn	01/24/86	

Small Entity: No

Agency Contact: Robert Petrangelo, ATF Coordinator, Department of the Treasury, Bureau of Alcohol, Tobacco and Firearms, 1200 Pennsylvania Avenue, NW, Washington, DC 20226, 202 566-7531

REVISION OF 27 CFR PART 47 TO CONFORM TO THE REVISION OF THE INTERNATIONAL TRAFFIC IN ARMS REGULATIONS (ITAR)

Significance: Agency Priority

Legal Authority: 22 USC 2778 Sec. 38, Arms Export Control Act of 1976; EO 11958 (42 FR 4311)

CFR Citation: 27 CFR 47

Legal Deadline: None

Abstract: On December 6, 1984, the Department of State published a final rule revising the International Traffic in Arms regulations. Subsequently, ATF is proposing to revise, simplify, and clarify regulations in 27 CFR Part 47 to conform to the revised ITAR and to improve the regulatory scheme established under the ARMS Export Control Act of 1976 to control the import of defense articles and defense services. The major changes consist of revision of the U.S. Munitions Import list articles, increase of the registration fees, procedures for filing the ATF Form 6A, revisions of the list of prescribed countries, and modification of the import provisions of articles coming from Canada.

Timetable:

Action	Data	FR Cite
Final Action	10/18/85	FR 42157

Small Entity: No

Agency Contact: Teri Byers, Arms Imports Specialist, Department of the Treasury, Bureau of Alcohol, Tobacco and Firearms, 1200 Pennsylvania Avenue, NW, Washington, DC 20226, 202 566-7151

Announcement 86—30

CURIOS & RELICS UPDATE—1985

Members of the Firearms Industry and Others Concerned

The following listed firearms have been classified as curios and relics during the period January 1985 through March 1986. This list is an addition to the ATF Publication 5300.11 (12/84). The index below gives the starting page for each section in the 1984 publication:

SECTION	PAGE
I. Ammunition classified as curios or relics (still under the Gun Control Act of 1968)	1
II. Firearms classified as curios or relics (still under the Gun Control Act of 1968)	10
III. NFA weapons removed from the Act as collector's items and classified as curios or relics (still under the Gun Control Act of 1968)	28
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SECTION II

Colt, Mark IV, Government Model, commemorative "Michigan State Police 60th Anniversary", 1917-1977. The left side of slide engraved with scroll pattern and depicts 4 modes of transportation; Horse, Motorcycle, Auto and Helicopter, serial numbers 1 of 1608 etc.

Harrington and Richardson, Model 999, revolver, caliber 22 Long rifle, barrel 6 inch, 110th year commemorative, serial number from 001 to 999.

Hopkins and Allen, Model 1901, "FOREHAND", caliber .32 S&W long.

Iver Johnson Arms, Pistol, caliber .380, U.S. Border Patrol 60th Anniversary commemorative, serial USBP 0001 to USBP 5000.

Marlin, Model 336 TS carbine, caliber 30-30, Powell Wyoming 75th anniversary commemorative, having PW serial number prefix.

Remington, Model 12, rifle, caliber .22 short, long rifle, and 22 Remington Special manufactured by Remington Arms, Union Metallic Cartridge Co., Remington Works, Ilion, New York from 1909 to 1936.

Russian (U.S.S.R.), Nagant revolver, model 1895, caliber 7.62 Nagant and .22 caliber, all variations, manufactured by the Tula Arsenal, Tula, Russia, after 1898.

Russian (U.S.S.R.), Tokarev, model TT, 1930, pistol, caliber 7.62, manufactured at the Tula Arsenal, Tula, U.S.S.R., from 1939 through 1956.

Russian (U.S.S.R.), Tokarev, model TT, 1933, pistol, caliber 7.62, manufactured at the Tula Arsenal, Tula, U.S.S.R., from 1933 through 1956.

Russian (U.S.S.R.) Tokarev, model TT R-3, .22 caliber, pistol.

Russian (U.S.S.R.) Tokarev, model TT R-4, .22 caliber, pistol.

Russian (U.S.S.R.), Tula Korovin, Tk, .25 ACP caliber, semi-automatic pistol.

Russian (U.S.S.R.), model 1891, Mosin-Nagant rifles, caliber 7.62 x 54R and .22 caliber, all models and all variations, manufactured after 1898 (i.e., M1891/30, M1910, M1938, and M1944).

Russian (U.S.S.R.), Tokarev, semi-automatic rifle, model 1938 (SVT38), caliber 7.62 x 54R, of Soviet manufacture.

Russian, (U.S.S.R.), Tokarev, semi-automatic rifle, model 1940 (SVT40), caliber 7.62 x 54R, of Soviet manufacture.

Russian (U.S.S.R.), Tokarev, semi-automatic carbine, model 1932 (non-standard), caliber 7.62 x 54R, of Soviet manufacture.

Russian (U.S.S.R.), Tokarev, semi-automatic carbine, model 1940 (SVT40), caliber 7.62 x 54R, of Soviet manufacture.

Russian (U.S.S.R.), Simonov, semi-automatic rifle, model SKS, caliber 7.62 x 39, of Soviet manufacture.

Russian (U.S.S.R.), Dragunov, semi-automatic rifle, model SVD, caliber 7.62 x 54R, of Soviet manufacture, Soviet military issue *only*.

Smith and Wesson, Model 53, Remington Jet Center Fire Magnum, caliber .22.

Springfield Armory, Inc., Korean War Commemorative .30 Caliber, M1 Garand Rifle, with gold plated swivels, rear sight base, windage knob, elevation knob, rear sight aperture and front sight. All other parts blued. Markings indicating reference to the Korean War are on the operating rod and receiver. The stock has a glossy finish and bears a medallion. Serial numbers from KW0001 to KW1000.

Swiss Schmidt Rubin, Model 1911, rifle made into a harpoon gun, caliber 12mm.

Winchester, Model 1894, Texas Sesquicentennial rifle and carbine, caliber .38-55.

SECTION III

Marlin, Model 94, carbine, caliber .32-20, with 15-¼ inch barrel, serial number 376900.

Winchester, Model 1873, carbine .44-40 with 14 inch barrel, serial number 710976B.

Winchester, Model 1892, carbine, caliber .32-20, with 14 inch barrel, serial number 850556.

Winchester, Model 1892, carbine, caliber .32-20, with 15 inch barrel, serial number 475520, 807957.

Winchester, Model 1892, carbine, caliber .38-40, with 15 inch barrel, serial number 832039.

Winchester, model 1892, carbine, caliber .44-40, with 14 inch barrel, serial number 319250, 323300, 323428, 823943, 842679, 976596, 979227, 980097, 987305.

Winchester, Model 1892, carbine, caliber .44-40, with 15 inch barrel, serial number 414906, 756846, 997305.

Winchester, Model 1894, carbine, caliber .30-30, with 15 inch barrel, serial number 368971, 447421, 495342, 839880, 1013465, 1021495, 1052749.

SECTION IV

Brevettata, Model F.N.A.—B 1943, submachinegun, caliber 9mm Parrabellum with an 8" barrel, serial number 5391.

Browning automatic rifle (BAR), Model 1918A2, manufactured by New England Arms Corporation prior to 1946.

Chinese manufactured copy of the U.S. 60mm mortar manufactured prior to 1946.

Russian (U.S.S.R.), Federov, automatic rifle, model 1916 AVF (Avtomat), caliber 6.5 x 50.5SR (6.5mm Japanese), of Russian manufacture.

Russian (U.S.S.R.), Simonov, automatic rifle, model 1936 AVS (AVS36), caliber 7.62 x 54R, of Soviet manufacture.

Russian (U.S.S.R.), Tokarev, automatic rifle, model 1940 AVT (AVT40), caliber 7.62 x 54R, of Soviet manufacture.

Russian (U.S.S.R.), Stechkin, automatic pistol, model APS, caliber 9 x 18 (Makarov), of Soviet manufacture.

United Defense Supply Corporation, Model U.D. 42, sub-machinegun, caliber 9mm Parabellum, as manufactured by Marlin Firearms Company, New Haven, Conn.

U.S. M 4 Survival Rifle, caliber .22 Hornet, as issued by the government, manufactured in the United States and Canada by Harrington and Richardson Arms Company.

Announcement 86—31

Methanol Contamination in Italian Wines

WHOLESALERS AND IMPORTERS OF WINE AND OTHERS CONCERNED

This will provide the importers/wholesalers of Italian wines with the current procedures to follow for the testing and documentation of methanol in Italian wines which are currently in their inventories and those of their retail customers, in customs bonded warehouses (CBW) awaiting release, or in transit from Italy.

On April 17, 1986, Officials of the Bureau met with officials of the Italian government to discuss the current U.S. restrictions on the importation and sale of Italian wines. During the course of this meeting, ATF was given documented assurances by the Italian Government that no Italian wines bottled or shipped prior to December 12, 1985 had been contaminated by the addition of methanol by Italian producers or bottlers.

Based on these assurances, the following procedures have been initiated by ATF:

1. For Italian wines for which there is documentary evidence that they were bottled or shipped to the United States prior to December 12, 1985, ATF will leave the testing for methanol content of these wines up to the discretion of the individual wholesaler, importer, distributor and retailer. ATF will not require mandatory testing of these wines.

2. For Italian wines bottled or shipped on or after December 12, 1985, all importers and wholesalers are advised that they should not sell these wines until they have had each brand of wine and vintage, if applicable, in their inventories tested by a commercial laboratory and certified as having safe levels of methanol. In addition to individual wholesaler testing, it will also be acceptable, if laboratory analyses are provided to the importer/wholesaler by his foreign supplier. These laboratory analyses must also cover specific brands of wines, and the testing must have been performed by an Italian laboratory certified by the Italian Ministry of Agriculture. In both cases, copies of all laboratory analyses must be forwarded by the importer/wholesaler to ATF in Washington, DC per the instructions in Industry Circular #86-9.

3. For Italian wines bottled or shipped on or after December 12, 1985, which are currently being held in a CBW pending testing for methanol content, Customs has agreed to allow for the taking of samples by the importer for testing in commercial laboratories. These wines will be released by Customs upon presentation to Customs of a laboratory analysis showing safe levels

of methanol for each brand in the shipment.

4. For those Italian wines bottled and shipped to the U.S. on or after December 12, 1985, but shipped before April 3, 1986, currently in transit from Italy and which do not have a laboratory certificate, the importer of record can effectuate release of these wines from Customs custody by signing a "Conditional Release Certification". By signing this certificate the importer of record will agree to secure samples of each brand and type of Italian wine from the shipment and send these samples to the ATF National Laboratory for testing. All samples should be mailed to 1401 Research Boulevard Rockville, Maryland 20850. Upon notification by Customs that the level of methanol was found safe, the shipment may be released to the retail level.

5. For Italian wines exported to the U.S. on or after April 3, 1986, a certificate of anlysis will be required by Customs before the shipment will be released. This certificate must cover every brand and type of wine in the shipment and be issued by an Italian testing laboratory certified by the Italian Ministry of Agriculture. Any shipment received by Customs which was shipped to the U.S. on or after April 3, 1986 containing Italian wines which is not accompanied by this certificate will be denied entry.

Announcement 86 — 32

Additional Imported Wines Contain Diethylene Glycol

Austrian

1976 Edelstaler Trockenbeerenauslese
Bouvier u. Muskat-Ottonel
White Grape Wine
Bottled and shipped by Ferdinand Pieroth, Burg Layen, West Germany

Ruster Red
WPG Rust-Neusiedlersee
Shipped by: All Austrian Wines & Spirits, Vienna

German

1983 Gau-Kongerheimer Vogelsang
White Eiswein Grape
Rheinhessen, Rulander
Qualitatswein mit Pradikat
Product of Germany
Bottled by Graflich Eltzsche Wein—And Sektkellerei, Burg Eltz GmBH
AP #4 907 183 74 84

1978 St. Martiner Schlos Ludwigshohe
White Grape Wine
Qualitatswein mit Pradikat
Beerenauslese
Bottled and shipped by Ferdinand Pieroth, Burg Layen, West Germany
AP #5 907 183 99 79

Italian

1983 Tenuta Di Pomino DOC
Marchesi De Frescobaldi
White Wine
Product of Italy

1978 Barra Gattinara
Estate Bottled
Guido Barra & Figlio
Product of Italy

1983 Fattoria Paradiso
Vigna dello Spungone
Estate Bottled by Mario Perri
Pagadebit
White table wine of Bertinoro

1971 Kiola
Barolo D.O.C.
Product of Italy
Bottled by FDO S.p.A.—La Morra, Italy

1983 Valenti
Dolcetto d'Alba DOC
Product of Italy
Bottled by FDO S.p.A.—La Morra, Italy

1984 Valenti
Chardonnay
Langhe, Piedmont
Product of Italy
Bottled by FDO S.p.A.

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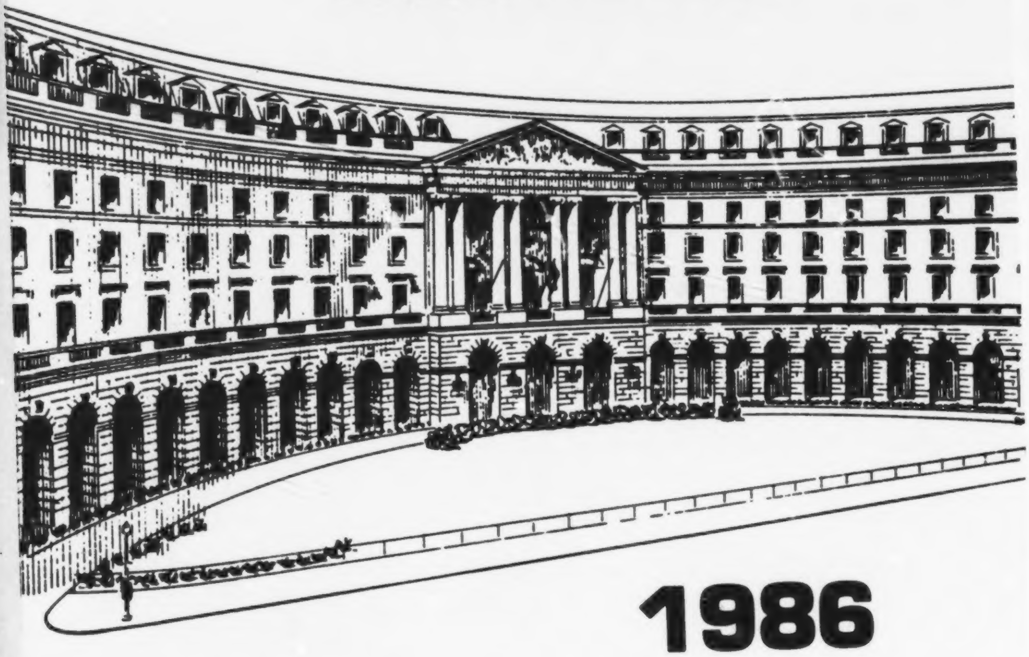

1986

VOLUME 3

DEPARTMENT OF TREASURY

T70.7:

QUARTERLY BULLETIN

Bureau of Alcohol, Tobacco and Firearms

Department of the Treasury

CONTAINS:

Treasury Decisions, Rulings, and Procedural and Administrative Matters Concerning Alcohol, Tobacco, Firearms, and Explosives

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NOTE

Comments concerning the contents of this issue may be directed to Bureau of Alcohol, Tobacco and Firearms, Office of Compliance Operations, Washington, DC 20226.

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For sale by the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402. Single copy price: $4.25 (domestic) and $5.35 (foreign). Subscription price: $15.00 (domestic) and $18.75 (foreign).

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Preface

The Alcohol, Tobacco and Firearms Quarterly Bulletin is the authoritative instrument of the Bureau for announcing official rulings and procedures, and for publishing Treasury decisions, legislation, administrative matters, and other items of general interest. It incorporates, into one publication, matters of the Bureau which are of public record.

The Bureau publishes rulings and procedures to promote uniform applicatio of the laws and regulations it administers. Rulings interpret the requirements of laws and regulations and apply retroactively unless otherwise indicated; whereas, procedures establish methods for performing operations to comply with such law and regulations.

Rulings and procedures reported in the Bulletin do not have the force and effect of Treasury Department regulations but they may be used as precedents. In applying published rulings and procedures, the effect of subsequent legislation, regulations, court decisions, rulings, and procedures must be considered. Concerned parties are cautioned against reaching the same conclusions in other cases unless the facts and circumstances are substantially the same.

Definitions

Rulings and Procedures that have an effect on previous rulings or procedures use the following defined terms to describe the effect:

AMPLIFIED is used in a situation where no change is being made in a prior published position, but the prior position is being extended to apply to a variation of the fact situation as set forth in the new ruling. Thus, if an earlier ruling held that a principal applied to A, and the new ruling holds that the same principal also applies to B, the earlier ruling is amplified.

CLARIFIED is used in a situation where the language in a prior ruling is being made clear because the language has caused, or may cause, some confusion. It is not used where a position in a prior ruling is being changed.

DECLARED OBSOLETE is used in a situation where a previously published ruling is not considered determinative with respect to future transactions. This term is most commonly used in a ruling that lists previously published rulings that are declared obsolete because of changes in law or regulations. A ruling may also be declared obsolete because its substance has been included in regulations subsequently adopted.

MODIFIED is used in a situation where the substance of a previously published position is being changed. Thus, if a prior ruling held that a principle applied to A but not to B, but the new ruling holds that it applies to both A and B, the prior ruling is modified.

REVOKED is used in a situation where the position in the previously published ruling is not correct and the correct position is being stated in the new ruling. Rulings which have been revoked have no further effect.

SUPERSEDED is used in a variety of situations. The term may be used where the new ruling amplifies a prior ruling *if* both the position taken in the prior ruling and the position as amplified are contained in the text of the new ruling. The term may be similarly used where the new ruling clarifies or modifies a prior ruling. The term may also be used where, for the purpose of updating references, the new ruling does nothing more than restate the substance and situation of a prior ruling. For example, a ruling issued under former statutes and regulations (e.g. the 1939 Code – 26 CFR Part 225) may be reissued under the current statutes and regulations (e.g. the 1954 Code – 27 CFR Part 201). Lastly, the term may be used when it is desired to republish in a single ruling a series of situations, names, etc., that were previously published over a period of time in separate rulings.

SUPPLEMENTED is used in situations in which a list, such as a list of curios and relics, is published in a ruling and that list is expanded by adding further items in subsequent rulings. After the original ruling has been supplemented several times, a new ruling may be published that includes the list in the original ruling and the additions, and supersedes all prior rulings in the series.

ABBREVIATIONS:

The following abbreviations appear in material published in the Bulletin:

A,B,C, etc. – The name of individuals
ATF – Bureau of Alcohol, Tobacco and Firearms
ATFQB – Alcohol, Tobacco and Firearms Quarterly Bulletin
ATF Proc. – ATF Procedure
ATF Rul. – ATF Ruling
C.B. – Cumulative Bulletin
Ct.D. – Court Decision
CFR – Code of Federal Regulations
D.O. – Delegation Order
E.O. – Executive Order
FAA Act – Federal Alcohol Administration Act
F.R. – Federal Register
M,N,X,Y,Z, etc. – The names of corporations, places and businesses, according to context
Pub. L. – Public Law
Rev. Proc. – Revenue Procedure
Rev. Rul. – Revenue Ruling
Stat. – Statutes at Large
T.D. – Treasury Decision
T.D.O. – Treasury Department Order
U.S.C. – United States Code
x and y – used to represent certain number and when used with the world "dollars" represent sums of money.

Treasury Decisions

Subpart A—ALCOHOL

TITLE 27—ALCOHOL, TOBACCO PRODUCTS AND FIREARMS—CHAPTER 1—BUREAU OF ALCOHOL, TOBACCO AND FIREARMS, DEPARTMENT OF THE TREASURY

Distilled Spirits Plants; Mixtures of Distilled Spirits and Wines

T.D. ATF-230

27 CFR Parts 5 and 19

AGENCY: Bureau of Alcohol, Tobacco and Firearms (ATF), Treasury.

ACTION: Final rule, Treasury decision.

SUMMARY: This final rule amends regulations containing the definition of "Spirits or distilled spirits", which were promulgated in T.D. ATF—198, 50 FR 8456 (1985), to exclude those mixtures of wine and spirits which are removed and sold as wine. The amended definition conform the regulations to 26 U.S.C. 5362(b)(2) which prohibits the removal of wine from the bonded premises of a distilled spirits plant for consumption or sale as wine.

EFFECTIVE DATE: July 16, 1986.

FOR FURTHER INFORMATION CONTACT: Shirley C. Osborne or J.R. Whitley, Distilled Spirits and Tobacco Branch, Bureau of Alcohol, Tobacco and Firearms, Washington, DC 20226, Telephone: (202) 566-7531.

SUPPLEMENTARY INFORMATION:

Regulatory Analysis

Prior to the Distilled Spirits Tax Revision Act of 1979 (Pub. L. 96-39, 93 Stat. 273), taxpaid wine could be received on the bottling/rectifying premises of a distilled spirits plant (DSP) for bottling or rectifying as a wine or wine product or for use in the manufacture of a distilled spirits product. A DSP proprietor who used the wine for a wine or wine product, could become liable for additional wine taxes as a result of (1) the increase in volume of the wine, (2) an increase in the taxable grade of the wine, or (3) the manufacture of a wine product.

With the all-in-bond concept, enacted in the Distilled Spirits Tax Revision Act of 1979, the bottling and rectifying operations of a DSP were required to be conducted on bonded premises. However, Congress made it clear that wine transferred to the bonded premises of a DSP could be used only in the production of a distilled spirits product and that a wine product must be produced only on bonded wine cellar premises. Accordingly, Congress amended 26 U.S.C. 5262(b) to provide that wine could be transferred from a bonded wine cellar to the bonded premises of a DSP, but "Any wine transferred to the bonded premises of a distilled spirits plant . . . may not be removed from such bonded premises for consumption or sale as wine."

Congressional intent was stated in the Senate Report (S. Rep. No. 96-249, on H.R. No. 4537, 96th Cong., 1st Sess. 226 (1979)) as follows: "such wine (which has been transferred to the bonded premises of a DSP) must be used solely in the manufacture of a distilled spirits product . . . All other operations involving the rectification or bottling of wines formerly done on the premises of a distilled spirits plant will be required to be conducted on the premises of a bonded wine cellar or taxpaid wine bottling house."

In promulgating the final rule for 27 CFR Part 19, ATF took the position that mixtures of distilled spirits and wine containing more than 50 percent wine on a proof gallon basis and bottled at 48° proof or less were excepted from the requirements relating to liquor bottles, labels and strip stamps, and that such mixtures were subject to the formula requirements in 27 CFR Part 5 relating to distilled spirits and to the labeling, advertising and standards of fill regulations in 27 CFR Part 4 relating to wine. The effect of this position was to tax such mixtures as distilled spirits, and to require such products to be labeled as wine.

It has come to our attention that this position produces a serious adverse effect on the excise tax revenues derived from these mixtures. This is because such mixtures, when taxed as a distilled spirits product, on a proof gallon basis, may be taxed at a rate as little as 7 cents a gallon, whereas a like product is taxed at a rate of 17 cents or $2.40 a gallon if produced at a bonded wine cellar. This result may occur because the product can be increased in volume by proof dilution or carbonated on DSP premises without an increase in tax liability.

However, it is clear from law and legislative history that Congress never intended such a result. As a result, we have reevaluated our position and determined that these products are wine and that as such their removal from a distilled spirits plant is precluded by section 5362(b).

Rulemaking Procedure

Based on the foregoing, ATF published a notice of proposed rulemaking [Notice No. 575, December 17, 1985, 50 FR 51408], proposing to amend the regulations in 27 CFR Parts 5 and 19 containing the definition of "Spirits or distilled spirits" to exclude mixtures of wine and distilled spirits containing more than 50 percent wine on a proof gallon basis and bottled at 48° proof or less.

In response to Notice No. 575, ATF received one comment from Heublein, Inc. They stated that they understand our desire to ensure that appropriate tax rates are used for products which contain both wine and distilled spirits. However, they disagree with our approach. As an alternative, they suggested that each component of the mixture be tax determined (at the applicable distilled spirits or wine rate) at the point of processing. We believe this procedure is contrary to the provisions of 26 U.S.C. 5612 since it would result in tax determined wine and distilled spirits being allowed to remain on bonded premises. We therefore cannot adopt this comment.

Accordingly, this final rule amends the regulation in 27 CFR Parts 5 and 19 which contains the definition of "Spirits or distilled spirits" to make it clear that mixtures of distilled spirits and wine containing more than 50 percent wine on a proof gallon basis and bottled at 48° proof or less are not distilled spirits products for tax purposes and that such products are wine. In addition, §§ 19.36 and 19.381 are amended to prohibit the removal of such wine from the bonded premises of a distilled spirits plant for consumption or sale as wine.

* * * * *

List of Subjects

27 CFR Part 5

Advertising, Consumer protection, Customs duties and inspection, Imports, Labeling, Liquors, Packaging and containers.

27 CFR Part 19

Administrative practice and procedure. Alcohol and alcoholic beverages, Authority delegations, Claims, Chemicals, Customs duties and inspection, Electronic funds transfers, Excise taxes, Exports, Gasohol, Imports, Labeling, Liquors, Packaging and containers, Puerto Rico, Reporting and recordkeeping requirements, Research, Security measures, Spices and flavorings, Surety bonds, Transportation, Virgin Islands, Warehouses, Wine.

Drafting Information

The principal authors of this document are Shirley C. Osborne and J. R. Whitley, Distilled Spirits and Tobacco Branch, Bureau of Alcohol, Tobacco and Firearms.

For the reasons set out in the preamble, the Director amends Subchapter A, Chapter I, Title 27 of the Code of Federal Regulations.

Section A: Part 5 is amended as follows:

PART 5—LABELING AND ADVERTISING OF DISTILLED SPIRITS

Paragraph 1. The authority citation for Part 5 is revised to read as follows:

Authority: 26 U.S.C. 5301, 7805, 27 U.S.C. 205.

§ 5.11 [Amended]

Par. 2. Section 5.11 is amended by removing the last sentence of the definition for distilled spirits.

Section B: Part 19 is amended as follows:

PART 19—DISTILLED SPIRITS PLANTS

Paragraph 1. The authority citation for Part 19 is revised to read as follows:

Authority: 19 U.S.C. 81c, 1311; 26 U.S.C. 5001, 5002, 5004-5006, 5008, 5041,5061, 5062, 5066, 5101, 5111-5113, 5171-5173, 5175, 5176, 5178-5181, 5201-5204, 5206, 5207, 5211-5215, 5221-5223, 5231, 5232, 5235, 5236, 5241-5243, 5271, 5273, 5301, 5311-5313, 5362, 5370, 5373, 5501-5505, 5551-5555, 5559, 5561, 5562, 5601, 5612, 5682, 6001, 6065, 6109, 6302, 6311, 6676, 7510, 7805; 31 U.S.C. 9301, 9303, 9304, 9306.

§ 19.11 [Amended]

Par. 2. Section 19.11 is amended by revising the definition for spirits or distilled spirits to read as follows:

* * * * *

Spirits or distilled spirits. That substance known as ethyl alcohol, ethanol, or spirits of wine in any form (including all dilutions and mixtures thereof, from whatever source or by whatever process produced) but not denatured spirits unless specifically stated. The term does not include mixtures of distilled spirits and wine, bottled at 48° proof or less, if the mixture contains more than 50 percent wine on a proof gallon basis.

* * * * *

§ 19.36 [Amended]

Par. 3. Section 19.36 is amended by adding a sentence at the end of paragraph (a) reading as follows:

* * * Wine may not be removed from the bonded premises of a distilled spirits plant for consumption or sale as wine.

§ 19.381 [Amended]

Par. 4. Section 19.381 is amended by adding a sentence immediately after the first sentence in paragraph (e) reading as follows:

* * * However, wine may not be removed from the bonded premises of a distilled spirits plant for consumption or sale as wine. * * *

Signed: May 13, 1986.

Stephen E. Higgins,
Director.

Approved: May 30, 1986.

Francis A. Keating III,
Assistant Secretary (Enforcement).

(Filed by the Office of the Federal Register on June 13, 1986, 8:45 am and published in the Federal Register for June 16, 1986, 51 F.R. 21746)

TITLE 27—ALCOHOL, TOBACCO PRODUCTS AND FIREARMS —CHAPTER 1—BUREAU OF ALCOHOL, TOBACCO AND FIREARMS, DEPARTMENT OF THE TREASURY

Ozark Mountain Viticultural Area

T.D. ATF-231

27 CFR Part 9

AGENCY: Bureau of Alcohol, Tobacco and Firearms, Treasury.

ACTION: Final rule; Treasury decision.

SUMMARY: The Bureau of Alcohol, Tobacco and Firearms (ATF) has decided to establish a viticultural area in Arkansas, Missouri, and Oklahoma to be known as "Ozark Mountain." This decision is the result of a petition submitted by Mr. Al Wiederkehr, a grape grower and winery proprietor in the area. The establishment of viticultural areas and the subsequent use of viticultural area names in wine labeling and advertising enables winemakers to label wines more precisely and helps consumers to better identify the wines they purchase.

EFFECTIVE DATE: August 1, 1986.

FOR FURTHER INFORMATION CONTACT: Steve Simon, FAA, Wine and Beer Branch, Bureau of Alcohol, Tobacco and Firearms, 1200 Pennsylvania Avenue, NW., Washington, DC 20226 (202-566-7626).

SUPPLEMENTARY INFORMATION:

Background

ATF regulations in 27 CFR Part 4 provide for the establishment of definite viticultural areas. The regulations also allow the name of an approved viticultural area to be used as an appellation of origin on wine labels and in wine advertisements.

Part 9 of 27 CFR provides for the listing of approved American viticultural areas, the names of which may be used as appellations of origin.

Section 4.25a(e)(1), Title 27 CFR, defines an American viticultural area as a delimited grape-growing region distinguishable by geographical features. Section 4.25(e)(2) outlines the procedures for proposing an American viticultural area. Any interested person may petition ATF to establish a grape-growing region as a viticultural area.

Petition

ATF received a petition from Mr. Al Wiederkehr of Altus, Arkansas, proposing an area in southern Missouri, northern Arkansas, and northeastern Oklahoma as a viticultural area to be known as "Ozark Mountain." The area that was proposed contains about 55,000 square miles. There are about 4,280 acres of grapes planted in the area proposed by Mr. Wiederkehr, and approximately 35 wineries are operating within that area.

Notice of Proposed Rulemaking

In response to the petition, ATF published a notice of proposed rulemaking, Notice No. 569, in the **Federal Register** on Tuesday, September 17, 1985. That notice proposed establishment of the "Ozark Mountain" viticultural area with boundaries generally as stated in the petition. The notice also solicited public comment concerning the proposed viticultural area.

Comments

The principal commenter was Mr. Robert G. Cowie, Secretary-Treasurer of the Arkansas Wine Producers Association and proprietor of a winery located just outside the boundaries proposed in Notice No. 569. Mr. Cowie requested extension of the boundaries in order to include an area south of the Arkansas River, in which his winery is located. This area is generally located between the Arkansas and Petit Jean Rivers and includes Mt. Magazine, the highest mountain in Arkansas. Mr. Cowie presented evidence to show that this area is locally known as being part of the "Ozark Mountain" region and contains the same distinguishing geographical features as the "Ozark Mountain" area proposed by the petitioner. Comments supportive of Mr. Cowie's request were received from two members of the Arkansas legislature, a geologist from the Arkansas Geological Commission, a geography professor at Arkansas Tech University, and eight others who are residents of Mr. Cowie's local area. The additional area proposed by Mr. Cowie contains about 800 square miles, of which about 60 acres are planted to grapes. At one time, as many as seven wineries were operating in that area, but at present the Cowie Wine Cellars is the only one left.

After considering the evidence presented by the commenters, ATF has determined that it would be proper to extend the boundaries of the "Ozark Mountain" area. Accordingly, this document prescribes boundaries for the "Ozark Mountain" viticultural area that include the area advocated by Mr. Cowie.

Name

The following evidence demonstrates that the viticultural area established by this Treasury decision is known by the name of "Ozark Mountain":

(a) Wine labels from Wiederkehr Wine Cellars and others have borne the appellation "Ozark Mountain" since as far back as 1959.

(b) This area has been referred to as the "Ozark Mountain" region in many geographical books, including *Natural Regions of the United States and Canada* by C.B. Hunt (W.H. Freeman & Co., San Francisco, 1974) and *The Ozarks* by Richard Rhodes (Time-Life Books, New York, 1974).

(c) The Ozark Mountain area is well-known as a wine making region, as is shown by this quote: "Like all of the other American wine regions, the Ozarks [Mountains] are quietly seething with new ideas, new personalities, new grape varieties and a new sense of direction." [*Restaurateurs' Guide to American Wines, Part IV: The Wines and Wineries of the Ozarks.* "Dining," April—May 1973, p. 58.)

Geography

The following evidence demonstrates that the viticultural area is distinguished geographically from the surrounding areas:

(a) In his book, *The Ozarks*, Richard Rhodes states (pp. 19, 22), as quoted by the petitioner:

Stretching from the forests of southern Missouri outside St. Louis through northern Arkansas to the Oklahoma plains near Tulsa, the 55,000 square miles of the Ozarks are bounded by five major rivers: the Mississippi, the Missouri, the Osage, the Neosho, and the Arkansas. The Ozark highlands, the only extensive elevated area in the United States between the Appalachians and the Rocky Mountains, consist of low mountains and hills shaped by springfed streams and rivers . . . cutting their way through the elevated bed rock . . .

. . . These boundaries do not merely locate the Ozarks on the map, but also serve to isolate some of the region's plant and animal life . . .

The Ozarks mark the farthest western extension of the great deciduous forest that once covered the eastern United States. Their western border is the beginning of the prairie that runs from Western Missouri to the Rockies and from Texas to Canada. Their northern border, the Missouri River, is about as far south as the glacier of the ice age came . . . And the hot, lush alluvial lands of the Mississippi begin at the Ozarks' abrupt southeastern edge, in the Missouri bootheel.

With four different climatic regions pressing against them, the Ozarks serve as a sanctuary for a selection of plants and animals from all sides . . .

(b) Geologically, the Ozarks are regarded as an upland plateau, in which mountains and valleys have been carved out by numerous streams and rivers. The land is hilly to mountainous, and the soils are characteristically stony and well-drained. The distinctive soil of the Ozark region is "Clay from deeply weathered, well consolidated sedimentary and deeply weathered volcanic rocks." (Hunt, op. cit., pp. 122-123.) Most of the land remains forested, as it was before the arrival of civilization, in contrast to the neighboring plains country.

(c) The primary effect which the mountainous terrain has on the climate of the Ozarks is to divide the region into innumerable small microclimatic temperature zones. This is demonstrated by the following quote from Milton D. Rafferty in *The Ozarks, Land and Life* (University of Oklahoma Press, Norman, 1980), p. 29:

Within the Ozarks, temperatures will vary widely with the orientation of slope, nature of surface materials, relief, and presence of water. South and west-facing slopes receive the greatest amount of sunlight and are subject to higher rates of evaporation . . . In winter, perhaps the most noticeable effect of temperature differences within a small area is the duration of snow and icicles on the north-facing slopes.

Air drainage creates the most readily observed temperature differences in summer. Nights are notable for the cool breeze that drains down the slopes, beginning an hour or two before sunset . . .

. . . As a rule, frosts occur in the valleys several weeks earlier in fall and later in spring than they do on the uplands, especially in the case of the larger valleys lying in the hill regions. The margins of the uplands have the best air drainage and are least subject to frosts.

Ozark viticulturists rely on their knowledge of local microclimatic conditions to select the best sites for the vineyards. Such sites possess generally similar conditions of soil and climate, thus giving Ozark viticulture a distinctive character. Favorable conditions for viticulture can be found at locations throughout the Ozarks, from Hermann in the north to Altus and Paris in the south. The reason for this is summarized succinctly by Milton D. Rafferty in the book mentioned above (P. 160) "The Growing of Grapes is Well Suited to the Climate and Soils of the Ozarks."

Boundaries

The boundaries of the viticultural area were proposed by the petitioner to largely follow the five major rivers mentioned above in the quote from Richard Rhodes (the Mississippi, Missouri, Osage, Neosho, and Arkansas). However, for reasons previously stated (under "*COMMENTS*"), these boundaries have been slightly modified, so that the southern boundary of the area established by this Treasury decision follows the Petit Jean River as well as the Arkansas River. These boundaries may be found on 11 U.S.G.S. maps in the scale of 1:250,000 titles St. Louis, Jefferson City, Springfield, Joplin, Tulsa, Fort Smith, Russellville, Memphis, Poplar Bluff, Paducah, and Rolla. The boundaries are as described in § 9.108, as added by this Treasury decision.

The following approved viticultural areas are entirely enclosed within the Ozark Mountain boundaries: Altus (§ 9.77) and Hermann (§ 9.71). In establishing a large viticultural area based on geographical features which affect viticultural features, ATF recognizes that the distinctions between a small area and its surroundings are more refined than the differences between a large area and its surroundings. It is possible for a large viticultural area to contain approved viticultural areas, if each area fulfills the requirements for establishment of a viticultural area.

Miscellaneous

ATF does not want to give the impression by approving "Ozark Mountain" as a viticultural area that it is approving or endorsing the quality of the wine from this area. ATF is approving this area as being distinct but not better than other areas. By approving this area, ATF allows wine producers to claim a distinction on labels and advertisements as to the origin of the grapes. Any commercial advantage can only come from consumer acceptance of "Ozark Mountain" wines.

* * * * *

List of Subjects in 27 CFR Part 9

Administrative practice and procedures, Consumer protection, Viticultural areas, Wine.

Drafting information

The principal author of this document is Steve Simon, FAA Wine and Beer Branch, Bureau of Alcohol, Tobacco and Firearms.

Issuance

Accordingly, 27 CFR Part 9 is amended as follows:

PART 9—AMERICAN VITICULTURAL AREAS

Paragraph A. The authority citation for Part 9 continues to read as follows:

Authority: 27 U.S.C. 205

Par. B. The table of sections in 27 CFR Part 9, Subpart C, is amended to add the title of § 9.108, to read as follows:

* * * * *

Subpart C—Approved American Viticultural Areas

Sec.

* * * * *

9.108 Ozark Mountain.

* * * * *

Par. C. Subpart C of 27 CFR Part 9 is amended by adding § 9.108, which reads as follows:

§ 9.108 Ozark Mountain.

(a) *Name.* The name of the viticultural area described in this section is "Ozark Mountain."

(b) *Approved maps.* The appropriate maps for determining the boundaries of Ozark Mountain Viticultural area are 11 U.S.G.S. maps in the scale of 1:250,000. They are titled—

(1) St. Louis, Missouri (1963, revised 1969);

(2) Jefferson City, Missouri (1955, revised 1970);

(3) Springfield, Missouri (1954, revised 1969);

(4) Joplin, Missouri; Kansas (1954, revised 1974);

(5) Tulsa, Oklahoma; Arkansas; Missouri; Kansas (1958, revised 1973);

(6) Fort Smith, Arkansas-Oklahoma (1978);

(7) Russellville, Arkansas (compiled in 1954);

(8) Memphis, Tennessee; Arkansas; Missouri (1953, revised 1978);

(9) Poplar Bluff, Missouri; Arkansas (1957, revised 1978);

(10) Paducah, Kentucky; Illinois; Missouri; Indiana (1949, revised 1969); and

(11) Rolla, Missouri; Illinois (1954, revised 1969).

(c) *Boundary*—(1) *General.* The Ozark Mountain viticultural area is located in Missouri, Oklahoma, and Arkansas. The starting point of the following boundary description is the point at which the Missouri River joins the Mississippi River north of St. Louis, Missouri (on the St. Louis map).

(2) *Boundary Description*—(i) The boundary proceeds from the starting point westward along the Missouri River until it meets the Osage River;

(ii) Then further westward along the Osage River (flowing through Lake of the Ozarks and the Harry S. Truman Reservoir) until it passes adjacent to Missouri Highway 82 in Osceola, Missouri (on the Jefferson City map);

(iii) Then southwestward along Missouri Highway 82 until it intersects U.S. Highway 54 in Eldorado Springs, Missouri (on the Joplin map);

(iv) Then westward along U.S. Highway 54 until it interesects U.S. Highway 71 near Nevada, Missouri;

(v) Then southward along U.S. Highway 71 until it intersects Interstate Highway 44, approximately 5 miles south of Carthage, Missouri;

(vi) Then westward and southwestward along Interstate Highway 44 into the State of Oklahoma, and continuing southwestward until Interstate Highway 44 crosses the Neosho River near Miami, Oklahoma (on the Tulsa map);

(vii) Then southward along the Neosho River (flowing through the Lake of the Cherokees, Lake Hudson, and Fort Gibson Lake) until it flows into the Arkansas River, approximately 2 miles west of Fort Gibson, Oklahoma (on the Fort Smith map);

(viii) Then southward and eastward along the Arkansas River (flowing through the Robert S. Kerr Lake) into the State of Arkansas, and continuing eastward until the Arkansas River is joined by Vache Grasse Creedk, approximately 4 miles east of Barling, Arkansas;

(ix) Then southeastward and southwestward following Vache Grasse Creek to the place where it is crossed by Arkansas Highway 10, near Greenwood, Arkansas;

(x) Then westward along Highway 10 to U.S. Highway 71

(Note: Highway 10 is the primary highway leading from Greenwood to Hackett, Arkansas);

(xi) Then southward and eastward along Highway 71 until it crosses Rock Creek;

(xii) Then northeastward along Rock Creek to Petit Jean Creek;

(xiii) Then generally northeastward and eastward along Petit Jean Creek until it becomes the Petit Jean River (on the Russellville map);

(xiv) Then generally eastward along the Petit Jean River, flowing through Blue Mountain Lake, until the Petit Jean River joins the Arkansas River;

(xv) Then generally eastward along the Arkansas River to Cadron Creek;

(xvi) Then northeastward and eastward along Cadron Creek, for about 2½ miles, until it passes under U.S. Highway 64, approximately 3½ miles west of Conway, Arkansas;

(xvii) Then eastward along U.S. Highway 64 until it intersects U.S. Highway 67, near Beebe, Arkansas (on the Memphis map);

(xviii) Then northeastward along U.S. Highway 67 into the state of Missouri, then northward until U.S. Highway 67 intersects U.S. Highway 60, in Poplar Bluff, Missouri (on the Poplar Bluff map);

(xix) Then eastward along U.S. Highway 60 until it crosses the western boundary of Stoddard County

(Note: Here that boundary is the St. Francis River);

(xx) Then northward, northeastward, and eastward along the boundary of Stoddard County until it joins the southern boundary of Cape Girardeau County (on the Cape Girardeau map);

(xxi) Then northeastward along the Cape Girardeau County boundary until it meets the Mississippi River south of Cape Girardeau, Missouri;

(xxii) Then northward along the Mississippi River to the starting point.

Signed: June 10, 1986.

Stephen E. Higgins,
Director.

Approved; June 23, 1986.

Michael H. Lane,
Deputy Assistant Secretary
(Regulatory, Trade, and
Tariff Enforcement).

(Filed by the Office of the Federal Register on July 1, 1986, 8:45 am and published in the Federal Register for July 2, 1986, 51 F.R. 24142)

TITLE 27—ALCHOHOL, TOBACCO PRODUCTS AND FIREARMS—CHAPTER I—BUREAU OF ALCOHOL, TOBACCO AND FIREARMS, DEPARTMENT OF THE TREASURY.

Implementing the Caribbean Basin Recovery Act; Distribution of Excise Taxes on Imported Rum

T.D.ATF-233-A

27 CFR Parts 19 and 250

AGENCY: Bureau Of Alcohol, Tobacco and Firearms (ATF), Treasury.

ACTION: Final rule (Treasury decision).

SUMMARY: This final rule amends ATF regulations to implement a portion of Title II of Pub. L. 98-67 (Caribbean Basin Economic Recovery Act). This law, signed by President Reagan on August 5, 1983, affects the distribution of Federal excise taxes collected on rum imported into the United States after June 30, 1983. The purpose of this law was to ensure that the economies of Puerto Rico and the United States Virgin Islands are not adversely affected by the elimination of importation duties on selected goods imported into the United States from certain countries located in the Caribbean Basin. This final rule supersedes the temporary rule (T.D. ATF-175) on this subject which was published in the Federal Register on May 16, 1984 (49 FR 20800).

EFFECTIVE DATE: September 4, 1986.

FOR FURTHER INFORMATION CONTACT: Robert White, Distilled Spirits and Tobacco Branch, Bureau of Alcohol, Tobacco and Firearms, 1200 Pennsylvania Avenue NW., Washington, DC 20226 (202-566-7531).

SUPPLEMENTARY INFORMATION:

Background

Under section 5001 of the Internal Revenue Code (IRC) of 1954 (as amended), the United States imposes an excise tax of $12.50 per proof gallon on distilled spirits, including rum, produced in or imported into the United States. Section 7652 of the IRC provides for merchandise manufactured in Puerto Rico and brought into the U.S. for consumption or sale, and merchandise produced in the Virgin Islands and imported into the United States, to be subject to a tax equal to the tax imposed in the United States upon like merchandise of domestic manufacture.

Excise taxes collected under the Internal Revenue laws of the United States on merchandise produced in Puerto Rico and transported to the United States (less the estimated amount necessary for payment of refunds and drawbacks), or consumed in the island, shall be covered into the Treasury of Puerto Rico at the rate prescribed by 26 U.S.C. 7652(f). The excise taxes collected on merchandise produced in the Virgin Islands and shipped to the United States (less certain amounts deposited to the U.S. Treasury as miscellaneous receipts), shall be paid to the Treasury of the Virgin Islands at the rate prescribed by 26 U.S.C. 7652(f). Section 7652(f) states that, with respect to taxes imposed under section 5001 or section 7652 on distilled spirits, the amount covered into the Treasuries of Puerto Rico and the Virgin Islands shall not exceed the lesser of the rate of $10.50, or the tax imposed under section 5001(a)(1), on each proof gallon. In addition, section 7652(c) states that merchandise containing distilled spirits shall not be treated as produced in Puerto Rico or the Virgin Islands unless at least 92 percent of the alcoholic content in such merchandise is attributable to rum.

In general, subject to the limitations stated in sections 2681(b)(2) and (3) of the Deficit Reduction Act of 1984 (Pub. L. 98-369), section 7652(c) of the IRC shall not apply with respect to merchandise containing distilled spirits brought into the United States from Puerto Rico after February 29, 1984, and before January 1, 1985.

The Treasury of Puerto Rico is paid directly from funds transferred by the Internal Revenue Service (IRS) on a monthly basis. The Virgin Islands receives fiscal year advances of funds based on estimates made by its Treasury and the U.S. Department of the Interior. The IRS reports the actual amount of merchandise that comes into the U.S. from the Virgin Islands on a monthly basis to the Department of the Interior, which is responsible for transferring the appropriate funds to the Virgin Islands and making adjustments to the amount of each fiscal year's advance to include any difference in the prior fiscal year's estimate and actual quantities brought into the United States.

The following procedures are presently used for determining the amount of excise taxes collected on bulk and cased distilled spirits (with an alcohol content of at least 92 percent rum) manufactured in Puerto Rico and the Virgin Islands, and brought into the U.S. The distilled spirits plants that bring in bulk spirits from Puerto Rico and the Virgin Islands report the amount received into their processing account, adjusted by the percentage of overall monthly gains or losses, on ATF Form 5110.28. The ATF regional offices receive Forms 5110.28 and report the figures to ATF headquarters of ATF F 5600.8 for bulk spirits transported from Puerto Rico and the Virgin Islands. ATF headquarters consolidates these figures and sends them to

IRS. For other than bulk distilled spirits transferred in bond to a distilled spirits plant, the excise tax collections on such distilled spirits are reported to the appropriate IRS offices in the United States in one of two ways. The first way concerns collections reported by Customs. Each Customs port of entry reports the amount of excise tax collected by it on merchandise (including distilled spirits) brought into the U.S. from all areas outside the United States on a Customs internal document. The information from this document is then entered into Customs' computer system. Customs reports monthly to IRS headquarters in Washington the amount of excise tax it collected on all merchandise brought into the United States from Puerto Rico and the Virgin Islands. This figure from Customs includes cased distilled spirits (including rum) transported into the U.S. from Puerto Rico and the Virgin Islands. The second way of reporting concerns collections reported by the United States IRS office in Puerto Rico. This office reports on excise taxes collected in Puerto Rico on products containing distilled spirits shipped to the United States. Most of the collections shown on this report are for cased rum although some of the collections are for nonbeverage products containing distilled spirits. The report is sent to the IRS Philadelphia Service Center. Both the Customs Report and the Report from the IRS office in Puerto Rico are used to help determine how much cover over of excise taxes is due to the Puerto Rican Treasury. In regard to the Virgin Islands, only the Customs report is used.

Changes Due to Pub. L. 98-67

As a result of the Caribbean Basin initiative, the Caribbean Basin Economic Recovery Act (Pub. L. 98-67, Title II) was passed, effective August 5, 1983, to promote economic revitalization and facilitate expansion of economic opportunities in the Caribbean Basin region. Subtitle A of Title II of this Act eliminates duties on certain merchandise, including rum, imported from Caribbean Basin countries which have been certified by the President. The elimination of the duties should reduce the price of Caribbean Basin imported rum to U.S. consumers, which may result in a reduction of Puerto Rican and Virgin Islands rum sold in the United States. Any such reduction in the U.S. sales of rum produced in Puerto Rico and the Virgin Islands will reduce revenues (from excise taxes collected on rum coming into the United States from Puerto Rico and the Virgin Islands) transferred from the U.S. Treasury to the Governments of these two possessions. Although the Caribbean Basin Economic Recovery Act was passed for the purpose of benefiting countries in the Caribbean Basin that meet certain criteria, this act was not intended to reduce the distilled spirits excise tax revenues of Puerto Rico and the Virgin Islands.

In order to protect the revenues of Puerto Rico and the Virgin Islands, section 221 was added to the Caribbean Basin Economic Recovery Act. This section states that distilled spirits excise taxes collected under section 5001(a)(1) of the Internal Revenue Code of 1954 on all rum imported into the United States from outside the country (including rum from possessions other than the Virgin Islands and Puerto Rico), whether or not from a Caribbean Basin country, will be paid over to the Treasuries of Puerto Rico and the Virgin Islands. These payments are to be reduced by the estimated amount necessary for payment of refunds and drawbacks. The Act does not impose restrictions on the uses to which the Government of the Virgin Islands or the Government of Puerto Rico may put the revenues they receive under the provision of this section of the Act.

The Caribbean Basin Economic Recovery Act states that the Secretary of the Treasury shall, from time to time, prescribe by regulation a formula for the division of the excise tax collections on imported rum between Puerto Rico and the Virgin Islands. For the purposes of this section of the Act, the term "rum" means any article classified under item 169.13 or 169.14 of the Tariff Schedules of the United States (19 U.S.C. 1202).

Temporary Rule (T.D. ATF-175)

On May 16, 1984, ATF published a temporary rule (T.D. ATF-175) in the **Federal Register** (49 FR 20800) which provided for a distribution that was proportional to the average excise taxes collected on rum brought into the U.S. from Puerto Rico and the Virgin Islands during fiscal years 1980, 1981, and 1982. As a result, Puerto Rico has been receiving 86.4 percent and the Virgin Islands 13.6 percent of the excise taxes collected on rum imported into the United States from all areas other than Puerto Rico and the Virgin Islands.

A temporary rule was used rather than a notice of proposed rulemaking because it was necessary to get regulations into effect quickly so that Puerto Rico and the Virgin islands could begin receiving the excise taxes collected on imported rum. This was especially necessary since Congress made this section of the Caribbean Basin Economic Recovery Act retroactive to July 1, 1983. However, in the preamble of the temporary rule, ATF stated that the formula published in the regulation's portion of the temporary rule did not take into account the fact that either Puerto Rico or the Virgin islands might lose more revenue than the other due to rum imports. We stated in the temporary rule that ATF was in the process of compiling and evaluating information which would enable it to propose a formula that would compensate Puerto Rico and the Virgin Islands for any reduction in their revenues due to rum imports. We also stated that the formula would be published in the Federal Register in the near future as a notice of proposed rulemaking so that all interested persons could submit comments.

Notice No. 558

On February 14, 1985, ATF published a notice of proposed rulemaking (Notice No. 558) in the **Federal Register** (50 FR 6203) which proposed amending 27 CFR Part 250 to change the formula used for distributing the excise taxes collected on imported rum to the Treasuries of Puerto Rico and the Virgin Islands. The formula proposed in the notice of proposed rulemaking took into consideration a situation whereby either Puerto Rico or the Virgin Islands lost more revenue than the other as a result of an increase in the share of the U.S. rum market by other Caribbean basin countries. The proposed formula provided for a greater allocation of U.S. excise taxes collected on rum from areas other than Puerto Rico and the Virgin Islands to the possession (Puerto Rico or the Virgin Islands) whose relative share in the total U.S. rum market had decreased. The proposed formula took into account the total shipments of rum to the United States, the shipments of rum from Puerto Rico and the Virgin Islands to the United States, and the relative shares of rum brought into the United States from each of these two possessions prior to passage of the Caribbean Basin Economic Recovery Act. For a more complete description of the proposed formula, see Notice No. 558.

Comments

Two comments were received in response to Notice No. 558. One was from the Governor of the United States Virgin Islands and the other was from the Director of the Puerto Rico Federal Affairs Administration. The Governor of the Virgin Islands stated that the proposed formula in Notice No. 558 appears to be fair and in accordance with the intent of the provision in the law to protect Matching Fund revenues from foreign competition. In this regard, he stated that the proposed formula was superior to alternatives 1, 2, or 3 (proposed in Notice No. 558) in meeting the intent of the law. The Governor further stated that the formula proposed in notice No. 558 reflects closer conformity with the intent and spirit of the law by protecting the mainland industry and at the same time maintaining the actual competitive position between the Virgin Islands and Puerto Rico in the world market. In addition, the Governor stated that the alternatives listed in Notice No. 558 suggest arbitrary cases which may or may not be in the best interest of the Virgin Islands. The Governor went on to state that during the period when the Virgin Islands was protesting the inclusion of rum for duty free treatment, many of the Caribbean Basin Initiative (CBI) countries noted that they produce and sell bottled rum and were not strongly interested in the bulk rum market. If this continues to be their position throughout the twelve year CBI program, then the excise taxes on Virgin Islands rum would not be at risk from the CBI countries except to the extent that Virgin Islands' bottled rum becomes less competitive. This is due to the fact that the Virgin Islands distills largely unaged, private label bulk rums. However, the Governor stated that the U.S. Virgin Islands has only one major rum producer, and that distillery could be lost to competition in two ways. First, CBI countries at any time could change their position vis-a-vis bulk rum production. Second, the CBI countries' bottled rum could eventually compete effectively against one or more Puerto Rico distilleries. To the extent that the competition ended there, Puerto Rico's share of the excise tax dollars would increase, which is as it should be under the provisions of section 221. However, if a Puerto Rico distillery under pressure from CBI foreign rum sales decided to switch to the bulk rum market, the Virgin Islands bulk rum production could cease, even though no CBI country was producing bulk rum. Therefore, the Governor stated that the proposed formula in Notice No. 558 appears to be fair to all parties with respect to the return of excise taxes on foreign rum.

The comment from the Director of the Puerto Rico Federal Affairs Administration stated that Puerto Rico is opposed to the proposed formula for distribution of excise taxes on imported rum to Puerto Rico and the Virgin Islands as published in Notice No. 558 (50 FR 6203). The Director stated that, since the Caribbean Basin Economic Recovery Act provides little guidance for the criteria that the Secretary of the Treasury should use when apportioning the excise tax on foreign rum between Puerto Rico and the United States Virgin Islands, general rules or reasonableness and practicality should be followed. These rules might be based either upon merit or upon need or some combination of the two. The Director stated, however, the proposed distribution formula adheres to neither of these principles.

The proposed distribution formula departs radically from the merit principle, according to the Director, by assuring both Puerto Rico and the U.S. Virgin Islands that each will receive its fiscal year 1980 through 1982 share of all rum excise tax collections (to the extent that this can be done without dipping into excise taxes on the other's rum) regardless of what might happen in its own industry. The proposed formula, according to the Director, is apparently based on the need to protect either Puerto Rico or the Virgin Islands against a fall in excise tax collections which it is assumed could only be caused by the competition of duty-free rum imports. Ignored is the detrimental effect on incentives caused by the fact that each party will receive a fixed percentage of the total excise tax regardless of what it might do to improve its own product or increase its sales. Furthermore, according to the Director, Puerto Rico assigned $75 million to the Economic Development Administration during the past five years for the promotion of rum in the U.S. market, $15.9 million of which was spent in the last year. The Director states that Puerto Rico's marketing efforts should be taken into consideration in analyzing the reasons for the change in the share of the rum market in the United States.

The Director of the Puerto Rico Federal Affairs Administration goes on to state that Puerto Rico's objection to the proposed formula is further strengthened based upon examination of the trend of Puerto Rico and Virgin Island's rum sales to the United States from 1980 through 1983, the last year before the duty was removed from Caribbean rum. The Director states that a case can be made that the effect of duty free competition is best measured by the degree of departure in 1984 from the previous trends, not by degree of difference from the market share average for 1980, 1981, and 1982 which is the rationale for the proposed new distribution formula. The Director further states that his calculations indicate that Puerto Rico sold 18 percent less than projected in 1984 and the Virgin Islands sold 17.8 percent less than projected. Under the proposed formula, Puerto Rico would get .23 percent less in total excise tax than a straight line trend would project while the Virgin Islands would get 31.69 percent more. However, according to the Director, using the existing interim formula, Puerto Rico would get 2.35 percent more than projected and the Virgin Islands would get 10.6 percent more.

The Director states the existing interim distribution formula (stated in T.D. ATF-175) comes close to adhering to the pure principle of merit in that it distributes the foreign rum excise tax in the same proportion that Puerto Rico and the United States Virgin Islands had earned it on their own sales in the U.S. mainland from 1980 through 1982. It departs somewhat from the merit principle in that it does not provide for future adjustments in the proportion of foreign excise taxes based upon changes in relative sales to the mainland. However, the Director thinks this small departure from the merit principle can be justified because of the need to compensate, to a reasonable extent, the party whose sales might not keep pace with the other party. Consequently, the Director states that Puerto Rico is prepared to settle for the existing interim formula even though it might be more appropriate, and would certainly be more favorable to Puerto Rico, to use 1981, 1982, and 1983 for calculating the relative apportionment of the foreign rum excise tax instead of 1980, 1981, 1982.

In addition, should relative need be the main determining factor for the distribution of the excise taxes on U.S. rum imports, the Director states that Puerto Rico might be due at least 97 percent of foreign rum excise taxes because, of the total of 3,293,089 residents of Puerto Rico and the United States Virgin Islands (by the 1980 U.S. Census), 3,196,520 or 97.1 percent live in Puerto Rico. Furthermore, in 1980 the per capita personal income in Puerto Rico was $3,410 or only 62 percent of the per capita personal income of the U.S. Virgin Islands.

ATF Response to Comments

After careful evaluation of the comments from Puerto Rico and the United States Virgin Islands, ATF has decided to basically adopt the formula proposed in Notice No. 558 but with two minor modifications. The first change involves adding a provision to the formula which ensures that Puerto Rico will always receive at least 51 percent of the applicable excise taxes on rum imported into the United States from countries other than Puerto Rico and the Virgin Islands. This provision is necessary to ensure that Puerto Rico will always receive a fair share of the excise taxes on rum imported into the United States from countries other than Puerto Rico and the Virgin Islands even if the sale of Virgin Islands' rum to the United States drops significantly. Without this provision, it is conceivable that Puerto Rico's share of the excise taxes on foreign rum imports could drop to zero while the Virgin Islands' share could increase to 100 percent if the sale of Virgin Islands' rum to the United States dropped sharply. Since it is extremely difficult, if not impossible, to determine that percentage of a drop in rum sales to the United States is due to an increase in competition from other Caribbean Basin Countries and what percentage is due to other totally unrelated matters, ATF feels that a drop in sales of Virgin Islands' rum in the United States should not cause Puerto Rico's share of the excise tax revenue (from imported foreign rum sales in the United States) to drop below 51 percent. ATF feels that the Virgin Islands should be compensated to a degree for any drop in rum sales to the United States. However, we feel that Puerto Rico should always receive more than half of the excise tax revenue since Puerto Rico's share of the United States rum market is considerably larger than the Virgin Islands and thus more susceptible to increased competition from other Caribbean Basin countries.

The second change to the formula proposed in Notice No. 558 involves using only fiscal year 1983 in determining the base percentages for Puerto Rico and the Virgin Islands rather than using fiscal years 1980 through 1982. ATF feels that fiscal year 1983 is a more accurate indicator of Puerto Rico and the Virgin Islands' share of the United States rum market prior to passage of the Caribbean Basin Economic Recovery Act. We feel that the effects of that Act, which eliminated the duty on rum from certain designated Caribbean Basin countries, would not have been felt by Puerto Rico or the Virgin Islands until fiscal year 1984. Consequently, the base percentages for fiscal year 1983 are 87.626889 percent for Puerto Rico and 12.373111 percent for the Virgin Islands. These percentages are based on $245,744,274 in excise taxes collected on Puerto Rican rum brought into the United States during fiscal year 1983 in comparison to $34,699,637 in excise taxes collected on Virgin Islands rum brought into the United States during that same year.

As a result of the two changes made to the formula which was proposed in Notice No. 558, Puerto Rico's share of the foreign rum excise tax revenue may go as high as 87.626889 percent but will never go below 51 percent. The Virgin Islands' share of the foreign rum excise tax revenue may go as high as 49 percent but will never go below 12.373111 percent. For a complete description, including examples, of the modified formula being adopted by this final rule, see the next section of this preamble.

ATF has decided to adopt this modified version of the formula proposed in Notice No. 558 because of the following reasons:

(1) The current, interim formula stated in 27 CFR 250.31 does not take into consideration a situation whereby Puerto Rico or the Virgin Islands loses more revenue that the other as a result of an increase in the sales of rum to the United States by Caribbean Basin countries other than Puerto Rico and the Virgin Islands. The formula adopted in this Treasury decision provides for a greater allocation of U.S. taxes collected on rum from areas other than Puerto Rico and the Virgin Islands to the possession (Puerto Rico or the Virgin Islands) whose relative share in the total U.S. rum market has decreased. The formula will take into account the total shipments of rum to the United States, the shipments of rum from Puerto Rico and the Virgin Islands, and the relative shares of rum brought into the U.S. from each of these two possessions prior to passage of the Caribbean Basin Economic Recovery Act.

(2) The formula proposed in Notice No. 558 did not take into consideration the fact that some of the loss in market share of rum in the United States in future years might be due to reasons other than increased competition from other Caribbean Basin countries. Such other reasons could include lack of marketing effort by Puerto Rico or the Virgin Islands or a reduction in the quality of Puerto Rico or Virgin Islands' products. The formula adopted by this final rule ensures that Puerto Rico and the Virgin islands receive a fair share of the excise tax revenue on foreign rum imported into the United States from countries other than Puerto Rico and the Virgin Islands, even through the sale of Puerto Rican or Virgin Islands' rum to the United States drops significantly.

The formula adopted in the regulations' portion of this final rule will remain in effect until further notice. Section 221 of the Caribbean Basin Economic Recovery Act states that the Secretary of the Treasury shall, from time to time, prescribe by regulation a formula for the division of the excise taxes on foreign rum imported into the United States between Puerto Rico and the Virgin Islands. Consequently, the formula which has been adopted by this final rule is subject to future change if it can be shown that the formula is unfair to either Puerto Rico and the Virgin Islands. If this is the case, then either Puerto Rico and the Virgin Islands may submit a petition to ATF requesting a change in the formula. The petition should include information thoroughly documenting how the formula is inequitable. The petition should also include suggestions on how to improve the formula. If ATF can verify the information submitted in such a petition, we will propose a new formula in a future notice of proposed rulemaking and will solicit public comments before making such a change.

The Formula

The formula adopted in this final rule will provide for an annual calculation using a permanent base distribution percentage and the previous fiscal year's figures for rum brought into the United States from all areas outside the United States. The permanent base distribution represents the amount of bulk and cased rum brought into the United States from Puerto Rico and the Virgin Islands during fiscal year 1983. (As used here, the fiscal year period is from October 1 through September 30.) Puerto Rico received $245,744,274 in excise taxes collected on its rum during that fiscal year, and the Virgin Islands received $34,699,637. Therefore, the base distribution percentage is 87.626889 percent for Puerto Rico and 12.373111 percent for the Virgin Islands.

The formula will apply only to the distribution of the excise taxes collected on rum imported into the United States from areas other than Puerto Rico and the Virgin Islands. The excise taxes collected on rum brought into the United States from these two possessions will continue to be paid over to the Treasury of the possession in which the rum was produced.

The distribution percentages will be calculated once a year, taking into account each previous fiscal year's figures for the total amount of rum brought into the United States from all areas outside the United States, including Puerto Rico and the Virgin Islands. Since it takes several months for these statistics to be compiled, and several more months to prepare notification of the distribution percentage, it will be effective on March 1 of each year and continue until March 1 of the next year.

The distribution percentages for Puerto Rico and the Virgin Islands will be calculated as follows:

(1) Multiply the total excise taxes collected on rum imported or brought into the United States from all areas (including Puerto Rico and the Virgin Islands) during the previous fiscal year by .87626889 and .12373111 to determine the respective shares of excise taxes collected on the entire rum market that will be allotted to Puerto Rico and the Virgin islands.

(2) Subtract from those respective shares the excise taxes collected on rum brought into the United States from Puerto Rico and the Virgin Islands, respectively, during the previous fiscal year to determine each possession's loss (or gain) in excise taxes in relation to the previous fiscal year's United States rum market. Then divide the results by the excise taxes collected on rum imported during the previous fiscal year from areas other than Puerto Rico and the Virgin Islands to determine the respective distribution percentage.

Notwithstanding the formula described above, the Virgin Islands' share of the excise taxes on rum imported into the United States from areas other than Puerto Rico and the Virgin Islands shall not exceed 59 percent nor drop below 12.373111 percent. Puerto Rico's share of the excise taxes on rum imported from areas other than Puerto Rico and the Virgin Islands shall not exceed 87.626889 percent nor drop below 51 percent.

The formula prescribed in this section shall take effect on March 1, 1987. Prior to that date, Puerto Rico will continue to receive 86.4 percent and the Virgin Islands will continue to receive 13.6 percent of the eligible excise taxes on rum imported into the United States from areas other than Puerto Rico and the Virgin Islands. To illustrate the use of this formula, the following examples are given

(**Note:**—The permanent base percentages, representing the excise tax revenues on rum from Puerto Rico and the Virgin Islands during fiscal year 1983, are 87.626889 percent ($245,744,274) for Puerto Rico and 12.373111 percent ($34,699,637) for the Virgin Islands.)

Example 1

In fiscal year 1986, excise taxes collected on rum brought into the United States from Puerto Rico and the Virgin Islands remain unchanged from the base period. Excise taxes collected on rum from other areas amounted to $10,000,000.

Step 1—	$245,744,274	(P.R.)
	34,699,637	(V.I.)
	10,000,000	(Other)
	$290,443,911	

$290,443,911	$290,443,911
× .87626889	×.12373111
$254,506,963	$ 35,936,948

Step 2—P.R. **$254,506,963**
−245,744,274
$ 8,762,689 ÷ $10,000,000 = 87.6268%

V.I. **$ 35,936,948**
− 34,699,637
$ 1,237,311 ÷ $10,000,000 = 12.3732%

Result: During the period March 1, 1987 to March 1, 1988, the percentages for the distribution of excise taxes collected on rum imported from other areas would be 87.6268 percent to Puerto Rico and 12.3732 percent to the Virgin Islands.

Example 2

In fiscal year 1986, excise taxes collected on rum brought into the United States from Puerto Rico and the Virgin Islands dropped slightly, while the amount of excise taxes collected on rum imported from other areas rose.

Step 1— $242,000,000 (P.R.)
33,000,000 (V.I.)
15,000,000 (Other)
$290,000,000

$290,000,000
× .87626889
$254,117,978

$290,000,000
× .12373111
$ 35,882,022

Step 2—P.R. $254,117,978
−242,000,000
$ 12,117,978 ÷ $15,000,000 = 80.7865%

V.I. $ 35,882,022
−33,000,000
$ 2,882,022 ÷ $15,000,000 = 19.2135%

Result: During the period March 1, 1987 to March 1, 1988, the percentages for the distribution of excise taxes collected on rum imported from other areas would be 80.7865 percent to Puerto Rico and 19.2135 percent to the Virgin Islands.

Example 3

In fiscal year 1986, excise taxes collected on rum brought into the United States from Puerto Rico rose, while the amount from the Virgin Islands dropped. Excise taxes collected on rum from other areas rose to $12,000,000.

Step 1— $247,000,000 (P.R.)
33,000,000 (V.I.)
12,000,000 (Other)
$292,000,000

$292,000,000
× .87626889
$255,870,516

$292,000,000
× .12373111
$ 36,129,484

Step 2—P.R. $255,870,516
−247,000,000
$ 8,870,516 ÷ $12,000,000 = 73.9210%

V.I. $ 36,129,484
−33,000,000
$ 3,129,484 ÷ $12,000,000 = 26.0790%

Result: During the period March 1, 1987 to March 1, 1988, the percentages for the distribution of excise taxes collected on rum imported from other areas would be 73.9210 percent to Puerto Rico and 26.0790 percent to the Virgin Islands.

Example 4

In fiscal year 1986, the excise taxes collected on rum brought into the United States from Puerto Rico rose dramatically, while the amount from the Virgin Islands dropped dramatically.

Step 1— $254,000,000 (P.R.)
26,000,000 (V.I.)
10,000,000 (Other)
$290,000,000

$290,000,000	$290,000,000
× .87626889	× .12373111
$254,117,978	$ 35,882,022

Step 2—P.R. $254,117,978
−254,000,000
$ 117,978 ÷ $10,000,000 = 1.1798%

V.I. $ 35,882,022
−26,000,000
$ 9,882,022 ÷ $10,000,000 = 98.8202%

Result: This formula results in Puerto Rico receiving 1.1798 percent and the Virgin Islands receiving 98.8202 percent of the excise taxes collected on rum imported from other areas. However, since a separate provision of the formula states that Puerto Rico's percentage of the excise taxes will not drop below 51 percent, the percentages for the distribution of excise taxes collected on rum imported from other areas would be 51 percent of Puerto Rico and 49 percent to the Virgin Islands.

Timing and Methods for Transfering Tax Collections

The timing and method of making the excise tax payments to Puerto Rico and the Virgin Islands will not change. Puerto Rico currently receives the excise taxes collected on its merchandise, and its share of the taxes collected on rum imported from other areas, on a monthly basis. The Virgin Islands receives fiscal year advances based on the estimated excise taxes to be collected on its merchandise brought into the United States. Actual amounts are subtracted from the advance monthly, and adjustments are made at the end of each fiscal year to reflect actual taxes collected on its merchandise that is brought into the United States. The Virgin Islands receives its shares of the taxes collected on rum imported from other areas on a monthly basis.

Regulatory Changes

In order for ATF to accurately determine the amount of rum brought into the United States from Puerto Rico, the Virgin Islands, and all other areas, it is necessary to require that distilled spirits plants importing bulk rum alter their reporting procedures to provide a more detailed breakdown between imported and domestic rum which is deposited into their processing accounts. This change in the reporting procedures requires amendments to the regulations in 27 CFR Part 19. The amendments to Part 19 concern adjustments to the reporting procedures on the Monthly Report of Processing Operations (ATF Form 5110.28), and Claim forms.

ATF F 5110.28 is used by the Bureau for determining the amount of excise taxes collected on bulk distilled spirits brought into the United States that is paid over to the Treasuries of Puerto Rico and the Virgin Islands. It is also used for statistical purposes.

The changes being made to 27 CFR Part 19 by this Treasury decision were previously implemented by a temporary rule (T.D. ATF-175, 49 FR 20800) on May 16, 1984. However, subsequent to the effective date of the temporary rule, ATF published T.D. ATF-198 (50 FR 8456) which implemented the final all-in-bond regulations effective June 1, 1985. The final all-in-bond regulations completely revised 27 CFR Part 19. These final regulations were under review for an extended period of time and did not take into consideration the already revised regulations in T.D. ATF-175. It was decided at that time not to delay further the publication of the final all-in-bond regulations in order to incorporate the changes in T.D. ATF-175. Instead, ATF decided to publish a subsequent Treasury decision to reinstate these provisions. Thus, this Treasury decision reinstates the regulations in 27 CFR Part 19 which initially were implemented by T.D. ATF-175 but were not incorporated in T.D. ATF-198.

Other regulatory changes being adopted by this final rule include totally revising 27 CFR 250.31. This change is necessary due to the complete revision of the formula for dividing the excise taxes on rum from other countries between Puerto Rico and the Virgin Islands.

* * * * *

Disclosure

Copies of the temporary rule (T.D. ATF-175), Notice No. 558, and the comments received in response to Notice No. 558, are available for inspection during normal business hours at the following location: ATF Reading Room, Office of Public Affairs and Disclosure, Room 4406, Ariel Rios Federal Building, 12th Street and Pennsylvania Avenue, NW., Washington, DC

Drafting Information

The principal author of this document is Robert White, Distilled Spirits and Tobacco Branch, Bureau of Alcohol, Tobacco and Firearms.

List of Subjects

27 CFR Part 19

Administrative practice and procedure, Alcohol and alcoholic beverages, Authority delegations, Claims, Chemicals, Customs duties and inspection, Electronic fund transfers, Excise taxes, Exports, Gasohol, Imports, Labeling, Liquors, Packaging and containers; Puerto Rico, Reporting and recordkeeping requirements, Research, Security measures, Spices and flavorings, Surety bonds, Transportation, Virgin Islands, Warehouses, Wine.

27 CFR Part 250

Administrative practice and procedure, Authority delegations, Beer, Customs duties and inspection, Electronic fund transfers, Excise taxes, Liquors, Packaging and containers, Reporting and recordkeeping requirements, Surety bonds, Transportation, U.S. possessions, Wine.

Issuance

PART 19—[AMENDED]

27 CFR Part 19—Distilled Spirits Plants—is amended to read as follows:

Paragraph 1

The authority citation for Part 19 continues to read as follows:

Authority: 19 U.S.C. 81c, 1311; 26 U.S.C. 5001, 5002, 5004-5006, 5008, 5041, 5061, 5062, 5066, 5101, 5111-5113, 5171-5173, 5175, 5176, 5178-5181, 5201-5207, 5211-5215, 5221-5223, 5231, 5232, 5235, 5236, 5241-5243, 5271, 5273, 5301, 5311-5313, 5362, 5370, 5373, 5501-5505, 5551-5555, 5559, 5561, 5562, 5601, 5612, 5682, 6001, 6065, 6109, 6302, 6311, 6676, 7510, 7805; 31 U.S.C. 9301, 9303, 9304, 9306.

Paragraph 2

The table of contents in Part 19 is amended to revise the heading of § 19.778 to read as follows:

19.778 Receipt of Puerto Rican and Virgin Islands spirits and receipt of rum from all other areas.

Paragraph 3

Section 19.42 is amended to revise paragraphs (b) and (c) to read as follows:

§ 19.42 Claims on spirits returned to bonded premises.

* * * * *

(b) If the alcoholic content of the spirits contain at least 92 percent Puerto Rican or Virgin Islands rum, or if the spirits contain rum imported from any area other than Puerto Rico and the Virgin Islands, the claim shall show:

(1) Proof gallons of the finished product derived from Puerto Rican or Virgin Islands spirits, or derived from rum imported from any other area; and

(2) The amount of tax imposed by 26 U.S.C. 7652 or 26 U.S.C. 5001, determined at the time of withdrawal from bond, on the Puerto Rican or Virgin Islands spirits, or on the rum imported from any other area, contained in the product.

(c) Claims for credit or refund of tax shall be filed by the proprietor of the plant to which the spirits were returned within six months of the date of the return. No interest is allowed on any claims for refund or credit.

Paragraph 4

Section 19.778 is revised to read as follows:

§ 19.778 Receipt of Puerto Rican and Virgin Islands spirits and receipt of rum from all other areas.

(a) *Accounting.* Proprietors shall maintain separate accountings, in proof gallons, of Puerto Rican and Virgin Islands spirits having an alcoholic content of at least 92 percent rum, and of imported rum from all areas other than Puerto Rico and the Virgin Islands, received in the processing account for nonindustrial use. Receipts, for the purposes of these accountings, are limited to Puerto Rican and Virgin Islands spirits having an alcoholic content of at least 92 percent rum, and to imported rum from all areas other than Puerto Rico and the Virgin Islands, received in the processing account from the storage account of the same plant, from the storage account of another plant, and from customs custody.

(b) *Adjustment.* Each month proprietors shall determine the percentage of overall monthly processing gains or losses of spirits. The percentage of overall monthly processing gains or losses can be computed by netting the gains and losses on ATF Form 5110.28 (Part I). The proof gallons of Puerto Rican or Virgin Islands spirits (having an alcoholic content of at least 92 percent rum) and the proof gallons of imported rum from all areas other than Puerto Rico and the Virgin Islands, accounted for as received in processing during the month, shall be adjusted by the percentage of overall monthly processing gains or losses for that month.

(c) *Report.* As required by § 19.792, proprietors shall file monthly reports on ATF Form 5110.28. That report must show separately the adjusted proof gallons of Puerto Rican and Virgin Islands spirits having an alcoholic content of at least 92 percent rum, and of imported rum from all areas other than Puerto Rico and the Virgin Islands, received in processing.

PART 250 — [AMENDED]

27 CFR Part 250—Liquors and Articles from Puerto Rico and the Virgin Islands—is amended to read as follows:

Paragraph 1

The authority citation for Part 250 continues to read as follows:

Authority: 5 U.S.C. 552(a); 19 U.S.C. 81c; 26 U.S.C. 5001, 5007, 5008, 5041, 5051, 5061, 5111, 5112, 5114, 5121, 5122, 5124, 5141, 5205, 5207, 5232, 5301, 5314, 5555, 6301, 6302, 6804, 7101, 7102, 7651, 7652, 7805; 27 U.S.C. 203, 205; 31 U.S.C. 9301, 9303, 9304, 9306.

Paragraph 2

Section 250.31 is revised to read as follows:

§ 250.31 Formula.

(a) The amount of excise taxes collected on rum that is imported into the United States from areas other than Puerto Rico and the Virgin Islands shall be deposited into the Treasuries of Puerto Rico and the Virgin Islands at the rate prescribed in 26 U.S.C. 7652(f). The distribution of such amount between Puerto Rico and the Virgin Islands shall be computed by using a permanent base percentage, which represents the excise taxes collected on rum brought into the United States from Puerto Rico and the Virgin Islands during fiscal year 1983. This base percentage is 87.626889 percent for Puerto Rico and 12.373111 percent for the Virgin Islands. The formula shall be as follows:

(1) Multiply the total excise taxes collected on rum brought into the United States (including rum from Puerto Rico and the Virgin Islands) during the previous fiscal year (October 1—September 30) by the base percentages to determine the relative shares of the entire U.S. rum market that will be allotted to Puerto Rico and the Virgin Islands;

(2) Subtract each of these shares from the excise taxes collected on rum transported to the United States from Puerto Rico and the Virgin Islands, respectively, during the previous fiscal year to determine each possession's loss or gain in relation to the previous fiscal year's U.S. rum market. Divide these results by the excise taxes collected on rum imported during the previous fiscal year from areas other than Puerto Rico and the Virgin Islands.

(b) Notwithstanding the formula prescribed in paragraph (a) above, the Virgin Islands' share of the excise taxes on rum imported into the United States from areas other than Puerto Rico and the Virgin Islands shall not exceed 49 percent nor drop below 12.373111 percent. Puerto Rico's share of the excise taxes on rum imported into the United States from areas other than Puerto Rico and the Virgin Islands shall not exceed 87.62889 percent nor drop below 51 percent.

(c) The percentage for the distribution of the excise taxes collected on rum imported into the United States from areas other than Puerto Rico and the Virgin Islands, that will be paid over to the Treasuries of Puerto Rico and the Virgin Islands, shall be effective on March 1 of each year, and shall remain in effect until March 1 of the following year.

(d) The method for transferring the excise tax collections on rum imported from areas other than Puerto Rico and the Virgin Islands, into the Treasuries of Puerto Rico and the Virgin Islands shall be the same as the method used for transferring excise taxes into the Treasury of Puerto Rico on distilled spirits (with an alcohol content of at least 92 percent rum) brought into the United States from Puerto Rico.

(e) The formula prescribed in this section shall take effect on March 1,

1987. Prior to that date, Puerto Rico shall continue to receive 86.4 percent of the eligible excise taxes on rum imported from areas other than Puerto Rico and the Virgin Islands. The Virgin Islands shall continue to receive 13.6 percent of these eligible excise taxes until March 1, 1987.

(Aug. 16, 1954, Chapter 736, 68A Stat. 907, as amended (26 U.S.C. 7652))

Signed: June 13, 1986.

Stephen E. Higgins,
Director.

Approved: July 14, 1986.

Francis A. Keating II,
Assistant Secretary (Enforcement).

(Filed by the Office of the Federal Register on August 4, 1986, 8:45 am and published in the Federal Register for August 5, 1986, 51 F.R. 28071)

TITLE 27—ALCOHOL, TOBACCO PRODUCTS AND FIREARMS—CHAPTER I—BUREAU OF ALCOHOL, TOBACCO AND FIREARMS, DEPARTMENT OF THE TREASURY.

Revision and Realignment of the Boundaries of Alexander Valley and Northern Sonoma Viticultural Areas

T.D. ATF-233-B

27 CFR Part 9

AGENCY: Bureau of Alcohol, Tobacco and Firearms (ATF), Treasury.

ACTION: Treasury decision, final rule.

SUMMARY: ATF is revising the boundary of the Alexander Valley viticultural area in Sonoma County, California, to include vineyard land which ATF had inadvertently omitted from the northeastern corner of the viticultural area with the issuance of T.D. ATF-187 [49 FR 42719], to extend the boundary at the northeastern corner to include land on which new vineyards were planted in 1985; to realign the western portion of the boundary to conform with that of the Northern Sonoma viticultural area; and, to include the Digger Bend area north and east of Healdsburg.

ATF is revising the boundary of the Northern Sonoma viticultural area in Sonoma County, California, to include land on which the new vineyards were planted in 1985 and to realign the northeastern and northwestern portions of the boundary to conform to the descriptions of like portions of the boundary of the Alexander Valley viticultural area.

EFFECTIVE DATE: This final rule is effective September 25, 1986.

FOR FURTHER INFORMATION CONTACT: Michael J. Breen, Coordinator, FAA, Wine and Beer Branch, Bureau of Alcohol, Tobacco and Firearms, Ariel Rios Federal Building, Room 6237, Washington, DC 20226, Telephone: (202) 566-7626.

SUPPLEMENTARY INFORMATION:

Background

With the issuance of T.D. ATF-187 on October 24, 1984, and T.D. ATF-204 on May 17, 1985, ATF established, respectively, the Alexander Valley and the Northern Sonoma viticultural areas on Sonoma County, California.

Petition No. 1

On January 25, 1985, ATF received a petition for revision of the northeastern corner of the Alexander Valley viticultural area to include sections 33 and 34, Township 12 N., Range 10 W. Both sections are in Sonoma County and adjoin the Sonoma County-Mendocino County line. The area within these sections, approximately 2.4 square miles or 1,536 acres, consists of uplands at elevations between 1,600 feet and 2,400 feet above sea level on Pine Mountain. Within the area there are 57.5 acres of vineyards consisting of one established vineyard (1974) of 13 acres and four newly planted vineyards (1985) of 3, 8, 11, and 22.5 acres, respectively.

Based on the evidence submitted with this petition, ATF finds that the land in the area shares similar geological history, topographical features, soils, and climatic conditions as adjoining land within the previously established boundary of the viticultural area.

Northern Sonoma

ATF's decisions to establish and now to revise the boundary of the Alexander Valley viticultural area affect the boundary of the Northern Sonoma viticultural area.

In the preamble to the notice proposing the Northern Sonoma viticultural area, ATF stated its intention to have the proposed boundary coincide generally with the "outer" portions of the boundaries of the Alexander Valley, Dry Creek Valley, Russian River Valley and Knights Valley viticultural areas. In the preamble to T.D. ATF-204, ATF repeated this statement.

In reviewing the petition to revise the Alexander Valley boundary, however, ATF discovered that the statement in the preceding paragraph, while conforming to ATF's expressed intentions, was not in agreement with the final rule in T.D. ATF-204. ATF attributes this discrepancy to the fact that in T.D. ATF-187 ATF compressed the eastern and western legs of the boundary of the Alexander Valley viticultural area but failed to incorporate conforming changes in T.D. ATF-204.

The revised Northern Sonoma boundary includes the site of the vineyard established in 1974 in section 33, T. 12 N., R. 10 W., as well as the sites of the four vineyards planted in 1985 in section 34, T. 12 N., R. 10 W.

In addition, the revisions of the northeastern and northwestern portions of the boundary effectively exclude approximately 32.5 square miles of rugged mountainous terrain on which ATF had found no evidence of viticulture via the rulemaking process for establishment of the Alexander Valley viticultural area.

Petition No. 2

T.D. ATF-187 established the southern portion of the boundary of the Alexander Valley viticultural area along a ridge of low-lying hills to the north of the Digger Bend area which is north and east of Healdsburg. T.D. ATF-159 (48 FR 48813) issued October 21, 1983, established the northern portion of the boundary of the Russian River Valley viticultural area along this same ridge of hills.

Based on the evidence submitted in a petition filed on January 16, 1986, ATF finds that the Digger Bend area has climate, soil, and other features which are common to the Alexander Valley viticultural area. Accordingly, ATF is amending the southern portion of the boundary of the Alexander Valley viticultural area to include the land and vineyards in the Digger Bend area. The southern portion of the boundary of the Alexander Valley viticultural area is extended to encompass approximately 8 square miles or 5,120 acres of which 275 acres are devoted to vineyards.

Amended Boundaries

The description of the boundary of the established Alexander Valley viticultural area, as found in 27 CFR 9.53(c), is amended (1) to provide for inclusion of sections 33 and 34, Township 12 N., Range 10 W., and portions of sections 3 and 4, Township 11 N., Range 10 W., (U.S.G.S. "Asti" Quadrangle 7.5 minute series map), (2) to effect a minor conforming change in the western portion of the boundary at the southwest corner of section 1, T. 11 N., R. 11 W., and (3) to extend the boundary from the southwestern corner at State Highway 101 east and south to Fitch Mountain and Black Peak, effectively creating overlapping of the Alexander Valley and Russian River Valley viticultural areas at Digger Bend.

ATF is revising the boundary of the Northern Sonoma viticultural area, as found in 27 CFR 9.70, (1) to include part of section 3, T. 11 N., R. 10 W., and the entirety of section 34, T. 12 N., R. 10 W., U.S.G.S. "Sonoma County, CA" map dated 1970, scale 1:100,000) and (2) to align the northeastern and northwestern portions of the boundary with the eastern and western portions of the boundary for the Alexander Valley viticultural area.

Comments

ATF received two written comments addressing two different aspects of the proposal.

One commenter opposed any further dilution of the appellation "Alexander Valley" by amendments which would increase the land area within the viticultural area. However, this commenter did not dispute any of the data submitted by either petitioner.

The second commenter, the petitioner for the pending Coastal Sonoma viticultural area, opposed inclusion of the Digger Bend area within the Russian River Valley viticultural area. This commenter states that the Digger Bend area should be removed from the Russian River Valley viticultural area since "(F)rom a climatic point of view, the boundary of the Russian River Valley as it was first proposed was a good first approximation, but not entirely accurate."

The establishment and subsequent revision of a viticultural area is dependent upon the finding by ATF that the area is distinctive from surrounding areas pursuant to the criteria prescribed in 27 CFR 4.25(e)(2). It is the responsibility of the petitioner(s) to submit evidence distinguishing the land area within the boundary from that excluded by the boundary line.

ATF finds that the evidence submitted by the petitioner for the Digger Bend revision supports the proposal in Notice No. 591 to include the Digger Bend area within the Alexander Valley and Russian River Valley viticultural areas. ATF's review of the data submitted by the petitioner, the letter from the former agricultural advisor for Sonoma County, the topography of the Digger Bend area in relation to areas to its north and south, and the limited thermograph readings, supports consideration of the Digger Bend area as being transitional between the "Coastal Warm" Alexander Valley and the "Coastal Cool" Russian River Valley. At the time of publishing Notice No. 591, ATF found little data to support a revision of the boundary of the Russian River Valley viticultural area to exclude the Digger Bend area. Upon the receipt of a petition containing such evidence, however, ATF would consider proposing a revision of the boundary of the Russian River Valley viticultural areas at a later date.

* * * * *

List of Subjects in 27 CFR Part 9

Administrative practice and procedure. Consumer protection, viticultural areas, and Wine.

Drafting Information

The author of this document is Michael J. Breen, FAA, Wine and Beer Branch, Bureau of Alcohol, Tobacco and Firearms.

Authority and Issuance

Title 27, Code of Federal Regulations, Part 9, American Viticultural Areas, is amended as follows:

PART 9—[AMENDED]

Par. 1. The authority citation for 27 CFR Part 9 continues to read as follows:

Authority: 27 U.S.C. 205.

Par. 2. ATF is amending § 9.53 of Subpart C of Title 27, Code of Federal Regulations, Part 9, by revising paragraphs (c)(3) through (c)(5) and (c)(21) through (c)(24), removing paragraphs (c)(25) and (c)(26), revising and redesignating paragraph (c)(27) as (c)(25), redesignating paragraphs (c)(28) through (c)(39) as paragraphs (c)(26) through (c)(37), removing paragraph (c)(40), and adding new paragraphs (c)(38) through (c)(40) to read as follows:

§ 9.53 Alexander Valley.

* * * * *

(c) *Boundary.* * * *

(3) Then east southeasterly in a straight line to the southeast corner of section 2, T. 11 N., R. 11 W.;

(4) Then south southeasterly in a straight line to the southeast corner of section 24, T. 11 N., R. 11 W.;

(5) Then southeasterly in a straight line across sections 30, 31, and 32, T. 11 N., R., 10 W., to the point at 38°45' N. latitude and 123°00' E. longitude in section 5, T. 10 N., R. 10 W.;

* * * * *

(21) Then southeasterly in a straight line approximately 11,000 feet to the 991-foot peak of Fitch Mountain;

(22) Then east southeasterly approximately 7,000 feet in a straight line to the peak identified as having an elevation of 857 feet;

(23) Then east southeasterly approximately 1,750 feet to the peak identified as Black Peak;

(24) Then southeasterly approximately 7,333 feet to the peak identified as having an elevation of 672 feet;

(25) Then northeasterly approximately 5,000 feet in a straight line to the point of confluence of Brooks Creek with the Russian River in T. 9 N., R. 8 W., on the Healdsburg Quadrangle map;

* * * * *

(38) Then east-northeasterly approximately 10,000 feet in a straight line to the southeast corner of section 34, T. 12 N., R. 10 W.;

(39) Then north along the east boundary of section 34, T. 12 N., R. 10 W., to the northeast corner of section 34, T. 12 N., R. 10 W.;

(40) Then west along the north boundaries of sections 34 and 33, T. 12 N., R. 10 W., to the point of beginning.

* * * * *

Par. 3. ATF is amending § 9.70 of Subpart C of Title 27, Code of Federal Regulations, Part 9, by revising paragraphs (b), (c) introductory text, (c)(1), and (c)(11) through (c)(14), redesignating paragraph (c)(15) as (c)(19), adding new paragraphs (c)(15) through (c)(18), redesignating paragraphs (c)(18) through (c)(23) as paragraphs (c)(23) through (c)(28) adding new paragraphs (c)(20) through (C)(22) to read as follows:

§ 9.70 Northern Sonoma.

* * * * *

(b) *Approved maps.* The approved maps for determining the boundary of the Northern Sonoma viticultural area are the U.S.G.S. Topographical Map of Sonoma County, California, scale 1:100,000, dated 1970, and the Asti Quadrangle, California, 7.5 minute series (Topographic) Map, dated 1959, photorevised 1978.

(c) *Boundary.* The Northern Sonoma Viticultural area is located in Sonoma County, California. The boundary description in paragraphs (c)(1) through (c)(28) of this section includes (in parentheses) the local names of roads which are not identified by name on the map.

(1) On the U.S.G.S. Topographical Map of Sonoma County, California, the beginning point is the point, in the town of Monte Rio, at which a secondary highway (Bohemian Highway) crosses the Russian River.

* * * * *

(11) The boundary proceeds north northwesterly in a straight line to the southeast corner of Section 14, Township 10 North, Range 9 West.

(12) The boundary proceeds north northwesterly in a straight line to the most eastern point of the northeastern line of Tzabaco land grant.

(13) The boundary proceeds west-northwesterly along the northeastern line of the Tzabaco land grant.

(14) On the Asti Quadrangle 7.5 minute series map, the boundary proceeds west-northwesterly in a straight line to the point on a peak identified as having an elevation of 830 feet.

(15) The boundary proceeds northwesterly 13,350 feet in a straight line to the point on a peak identified as having an elevation of 1,070 feet.

(16) The boundary proceeds northwesterly in a straight line to the point on a peak identified as having an elevation of 1,301 feet.

(17) The boundary proceeds east-northeasterly approximately 10,000 feet in a straight line to the southeast corner of section 34, Township 12 North, Range 10 West.

(18) On the U.S.G.S. Topographical Map of Sonoma County, California, the boundary proceeds north along the east boundary of section 34, Township 12 North, Range 10 West, to the Sonoma County-Mendocino County line.

(19) The boundary follows the Sonoma County-Mendocino County line west, then south to the southwest corner of Section 34, Township 12 North, Range 11 West.

(20) The boundary proceeds in a straight line east southeasterly to the southeast corner of section 2, Township 11 North, Range 11 West.

(21) The boundary proceeds in a straight line south southeasterly to the southeast corner of section 24, Township 11 North, Range 11 West.

(22) The boundary proceeds in a straight line southeasterly across sections 30, 31 and 32 in Township 11 North, Range 10 West, to the point at 38°45′ North latitude parallel and 123°00′ East longitude in section 5, T. 10 N., R. 10 W.

* * * * *

Signed: July 14, 1986.

W.T. Drake,
Acting Director.

Approved August 5, 1986.

Francis A. Keating, II,
Assistant Secretary (Enforcement).

(Filed by the Office of the Federal Register on August 25, 1986, 8:45 am and published in the Federal Register for August 26, 1986, 51 F.R. 30352)

Subpart B—TOBACCO

TITLE 27—ALCOHOL, TOBACCO PRODUCTS AND FIREARMS —CHAPTER I—BUREAU OF ALCOHOL, TOBACCO AND FIREARMS, DEPARTMENT OF THE TREASURY

Implementation of the Consolidated Omnibus Budget Reconciliation Act of 1985; Chewing Tobacco and Snuff

T.D. ATF-232

27 CFR Parts 270, 275, 290 295, and 296

AGENCY: Bureau of Alcohol, Tobacco and Firearms (ATF), Treasury.

ACTION: Temporary rule (Treasury decision).

SUMMARY: This temporary rule implements Title XIII, Subtitle B of the Consolidated Omnibus Budget Reconciliation Act of 1985 (Pub. L. 99-272, 100 Stat. 311).

This document amends regulations in 27 CFR Parts 270, 275, 290, and 296 to provide for the taxation and regulation of chewing tobacco and snuff pursuant to Pub. L. 99-272. In addition, detailed rules for the grandfathering of existing manufacturers of chewing tobacco and snuff into the current regulatory framework for other tobacco products are provided. Also, this document provides a transitional rule for package markings for chewing tobacco and snuff which will allow manufacturers and importers to coordinate the package markings revisions required by Parts 270 and 275, with those required by the Federal Trade Commission pursuant to the Comprehensive Smokeless Tobacco Health Education Act of 1986 (Pub. L. 99-252, 100 Stat. 30).

DATE: The effective date of the temporary regulations is retroactive to July 1, 1986.

FOR FURTHER INFORMATION CONTACT: Nancy Cook or Clifford A. Mullen, Distilled Spirits and Tobacco Branch, Bureau of Alcohol, Tobacco and Firearms, Room 6235, Ariel Rios Federal Building, 1200 Pennsylvania Avenue, NW., Washington, DC 20226; (202) 566-7531.

SUPPLEMENTARY INFORMATION: This document contains temporary regulations implementing the Consolidated Omnibus Budget Reconciliation Act of 1985 (Pub. L. 99-272). The temporary regulations provided by this document will remain in effect until superseded by final regulations on this subject. This document also provides a transitional rule for package markings for chewing tobacco and snuff which will allow manufacturers and importers to coordinate the package markings revisions required by Parts 270 and 275, with those required by the Federal Trade Commission pursuant to the Comprehensive Smokeless Tobacco Health Education Act of 1986 (Pub. L. 99-252).

A notice of proposed rulemaking with respect to the final regulations appears elsewhere in this issue of the **Federal Register.**

Legislative Background

Under Pub. L. 99-272, the Consolidated Omnibus Budget Reconciliation Act of 1985, enacted April 7, 1986, chewing tobacco and snuff manufactured in or imported into the United

States after June 30, 1986, are subject to tax at the rate of 8 cents and 24 cents per pound, respectively. The Act also contains a transitional rule which allows those currently engaged in the manufacture of chewing tobacco and snuff, and who make application for a permit prior to July 1, 1986, to continue to engage in such business pending final action on the application.

Smokeless tobacco products have not been subject to Federal excise tax since 1965. A previous excise tax on such products, imposed at a rate of 10 cents per pound, was repealed by the Excise Tax Reduction Act of 1965 (Pub. L. 89-44).

In addition, the act, by amending the definitions for "Tobacco products" and a "Manufacturer of tobacco products" to include smokeless tobacco, subjects manufacturers of such products to all the statutory and regulatory controls set forth in Chapter 52 of the Internal Revenue Code of 1954. These controls include taxpayment, permit qualification, bonding, record-keeping, and civil and criminal sanctions.

* * * * *

List of Subjects

27 CFR Part 270

Administrative practice and procedure, Authority delegations, Cigars and cigarettes, Claims, Electronic fund transfers, Excise taxes, Labeling, Packaging and containers, Penalties, Reporting requirements, Seizures and forfeitures, Surety bonds.

27 CFR Part 275

Administrative practice and procedure, Authority delegations, Cigarette papers and tubes, Cigars and cigarettes, Electronic fund transfer, Claims, Customs duties and inspection, Excise taxes, Imports, Labeling, Packaging and containers, Penalties, Reporting requirements, Seizures and forfeitures, Surety bonds, U.S. possessions, Warehouses.

27 CFR Part 290

Administrative practice and procedure, Aircraft, Authority delegations, Cigarette papers and tubes, Cigars and cigarettes, Claims, Customs duties and inspection, Excise taxes, Exports, Foreign-trade zones, Labeling, Packaging and containers, Penalties, Surety bonds, Vessels, Warehouses.

27 CFR Part 295

Administrative practice and procedure, Authority delegations, Cigarette papers and tubes, Cigars and cigarettes, Excise taxes, Labeling, Packaging and containers.

27 CFR Part 296

Authority delegations, Cigarette papers and tubes, Cigars and cigarettes, Claims, Disaster assistance, Excise taxes, Penalties, Seizures and forfeitures, Surety bonds.

Drafting Information

The Principal authors of this document are Clifford A. Mullen and Nancy F. Cook of the Distilled Spirits and Tobacco Branch, Bureau of Alcohol, Tobacco and Firearms.

Effective Date

Because the provisions of section 13202 of Pub. L. 99-272 become effective on July 1, 1986 and require immediate taxpayer implementation and compliance, it is thereby found to be impractical and unnecessary to issue this Treasury decision with notice and public procedure thereon under 5 U.S.C. 553(b) or subject to the effective date limitation of 5 U.S.C. 553(d).

Authority and Issuance

Accordingly, ATF is proposing to amend Title 27 of the Code of Federal Regulations as follows:

PART 270—[AMENDED]

Sec. A. The regulations in 27 CFR Part 270 are amended as follows:

Paragraph 1. The authority citation for Part 270 is revised to read as follows:

Authority: 5 U.S.C. 552(a), 18 U.S.C. 926, 22 U.S.C. 2778, 26 U.S.C. 5701, 5703, 5704, 5705, 5707, 5711, 5712, 5713, 5721, 5722, 5723, 5741, 5751, 5753, 5761, 5762, 6109, 6301, 6302, 6311, 6313, 6402, 6404, 6423, 6676, 7212, 7325, 7342, 7502, 7503, 7606, 7805, 27 U.S.C. 205, 31 U.S.C. 9301, 9303, 9304, 9306.

Par 2. The heading of Part 270 is revised to read as follows:

PART 270—MANUFACTURE OF TOBACCO PRODUCTS

Par. 3. The table of contents for Part 270 is amended by replacing the words "cigars and cigarettes" with the words "tobacco products" in the following section headings, §§ 270.1, 270.44, 270.61a, 270.183, and 270.313; the following new sections are added, §§ 270.25, 270.216, and 270.216a; replacing the words "cigars and cigarettes" with the words "tobacco products" in the undesignated center headings following Subpart H, § 270.217, § 270.236, § 270.287; and by replacing the words "cigars and cigarettes" with the words "tobacco products" and replacing the word "tobacco" with the word "materials" in § 270.252 to read as follows:

270.1 Maufacture of tobacco products.

* * * * *

270.25 Smokeless tobacco tax rates.

* * * * *

270.44 Disposal of forfeited, condemned, and abandoned tobacco products.

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Subpart E—Qualification Requirements for Manufacturers

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270.61a Transitional rule.

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Subpart H—Operations by Manufacturers

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Determination and Payment of Taxes on Tobacco Products

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270.183 Record of tobacco products.

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270.216 Notice for smokeless tobacco.

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270.216a Transitional rule.

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270.217 * * *

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Exemption from Taxes on Tobacco Products

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270.236 * * *

Other Provisions Relating to Tobacco Products

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270.252 Reduction of tobacco products to materials.

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270.287 * * *

Tobacco Products Lost or Destroyed

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270.313 Disposition of tobacco products and schedule.

* * * * *

§ 270.1 [Amended]

Par. 4. Section 270.1 is amended by replacing the words "cigars and cigarettes" with the words "tobacco products" wherever they appear in the heading and text.

Par. 5. Section 270.11 is amended by adding the definition for "Chewing Tobacco" to read as follows:

§ 270.11 [Amended]

* * * * *

Chewing tobacco. Any leaf tobacco that is not intended to be smoked.

* * * * *

Par. 6. Section 270.11 is amended by revising the definition for "Determined or determination" to read as follows: "When used with respect to the tax on tobacco products, determined or determination means that the quantity and kind (small cigars, large cigars, small cigarettes, large cigarettes, chewing tobacco, snuff) of tobacco products and wholesale price of large cigars to be removed subject to tax have been established as prescribed by this part so that the tax payable with respect thereto may be calculated."

Par. 7. Section 270.11 is amended by revising the definition for "Export warehouse" to read as follows: "A bonded internal revenue warehouse for the storage of tobacco products and cigarette papers and tubes, upon which the internal revenue tax has not been paid for subsequent shipment to a foreign country, Puerto Rico, the Virgin Islands, or a possession of the United States, or for consumption beyond the jurisdiction of the internal revenue laws of the United States."

Par. 8. Section 270.11 is amended by revising the definition of "In bond" to read as follows:

"The status of tobacco products and cigarette papers and tubes, which come within the coverage of a bond securing the payment of internal revenue taxes imposed by 26 U.S.C. 5701 or 7652, and in respect to which such taxes have not been determined as provided by regulations in this chapter, including (a) such articles in a factory, (b) such articles removed, transferred, or released, pursuant to 26 U.S.C. 5704, and with respect to which relief from the tax liability has not occurred, and (c) such articles on which the tax has been determined, or with respect to which relief from the tax liability has occurred, which have been returned to the coverage of a bond."

Par. 9. Section 270.11 is amended by revising the definition of "Manufacturer of tobacco products" to read as follows:

"Any person who manufactures cigars, cigarettes, or smokeless tobacco, except that such term shall not include (a) a person who produces cigars, cigarettes, or smokeless tobacco solely for his own personal consumption or use; or (b) a proprietor of a customs bonded manufacturing warehouse with respect to the operation of such warehouse."

Par. 10. Section 270.11 is amended by revising the definition of "Removal or remove" to read as follows: "The removal of tobacco products from the factory or release from customs custody, including the smuggling or other unlawful importation of such articles into the United States."

Par. 11. Section 270.11 is amended by adding the definition of "Smokeless tobacco" which reads as follows:

Smokeless tobacco. Any snuff or chewing tobacco.

Par. 12. Section 270.11 is amended by adding the definition of "Snuff" to read as follows:

Snuff. Any finely cut, ground, or powdered tobacco that is not intended to be smoked.

Par. 13. Section 270.11 is amended by revising the definition of "Tobacco products" to read as follows:

"Cigars, cigarettes, and smokeless tobacco. The term does not include smoking tobacco."

Par. 14. Section 270.25 is added and reads as follows:

§ 270.25 Smokeless tobacco tax rates.

On smokeless tobacco, manufactured in or imported into the United States, the following tax rates are imposed by law:

(a) *Snuff.* 24 cents per pound and a proportional tax at the like rate on all fractional parts of a pound.

(b) *Chewing tobacco.* 8 cents per pound and a proportional tax at the like rate on all fractional parts of a pound. (Pub. L. 99-272, 26 U.S.C. 5701)

§ 270.26 [Amended]

Par. 15. Section 270.26 is amended by removing the words "cigars and/or cigarettes" wherever they appear and replacing them with the words "tobacco products".

§ 260.27 [Amended]

Par. 16. Section 270.27 is amended by removing the words "cigars and/or cigarettes" wherever they appear and replacing them with the words "tobacco products".

§ 270.41 [Amended]

Par. 17. Section 270.41(c) is amended to change the address of the ATF Distribution Center to 7943 Angus Court, Springfield, Virginia 22153.

§ 270.42 [Amended]

Par. 18. Section 270.42 is amended by removing the words "cigars or cigarettes" and replacing them with the words "tobacco products".

§ 270.44 [Amended]

Par. 19. Section 270.44 is amended by removing the words "cigars and/or cigarettes" wherever they appear and replacing them with the words "tobacco products".

§ 270.61 [Amended]

Par. 20. Section 270.61 is amended by removing the words "cigars or cigarettes" and replacing them with the words "tobacco products".

Par. 21. Section 270.61a is added and reads as follows:

§ 270.61a Transitional rule.

Any person who—

(a) On April 7, 1986, was engaged in business as a manufacturer of smokeless tobacco, and

(b) Before July 1, 1986, submits an application, as provided in this Part, to engage in such business, may, continue to engage in such business pending final action on such application. Pending such final action, all provisions of Chapter 52 of the Internal Revenue Code of 1954 shall apply to such applicant in the same manner and to the same extent as if such applicant were a holder of a permit to manufacture smokeless tobacco under such chapter 52.

§ 270.69 [Amended]

Par. 22. Section 270.69(c) is amended by removing the words "cigars and cigarettes" and replacing them with the words "tobacco products".

Par. 23. Section 270.72 is revised to read as follows:

§ 270.72 Use of factory premises.

Unless otherwise authorized by the Director as provided in § 270.47, the factory premises shall be used exclusively for the purpose of manufacturing and storing tobacco products; storing materials, equipment, and supplies related thereto or used or useful in the conduct of the business; and carrying on activities in connection with the business of the manufacturer: Provided, That tobacco products manufacturers who maintain adequate records showing the date and total quantity in pounds, of the tobacco received, shipped or delivered, lost, and destroyed, in respect to the manufacture and storage of smoking tobacco (as well as tobacco products) may continue such operations on the tobacco products factory premises, without application for authorization as prescribed in § 270.47.

§ 270.104 [Amended]

Par. 24. Section 270.104 is amended by removing the words "cigars and cigarettes" and replacing them with the words "tobacco products".

Par. 25. Section 270.133 is revised to read as follows:

§ 270.133 Amount of individual bond.

The amount of the bond of a manufacturer of tobacco products shall be not less than the total amount of tax liability on all tobacco products manufactured in his factory, received in bond from other factories and from export warehouses, and released to him in bond from customs custody, during any calendar month. Where the amount of any bond is no longer sufficient and the bond is in less than the maximum amount, the manufacturer shall immediately file a strengthening or superseding bond as required by this subpart. The amount of any such bond (or the total amount including strengthening bonds, if any) need not exceed $250,000 for a manufacturer producing or receiving cigarettes in bond; need not exceed $150,000 for a manufacturer producing or receiving cigars or smokeless tobacco in bond; and need not exceed $250,000 for a manufacturer producing or receiving, in any combination, tobacco products in bond. The bond of a manufacturer of tobacco products shall in no case be less than $1,000.

Par. 26. The undesignated centerheading following the heading for Subpart H is revised to read "Determination and Payment of Taxes on Tobacco Products".

§ 270.161 [Amended]

Par. 27. Section 270.161 is amended by removing the words "cigars and cigarettes" wherever they appear and replacing them with the words "tobacco products".

§ 270.162 [Amended]

Par. 28. Section 270.162 is amended by removing the words "cigars and cigarettes" wherever they appear and replacing them with the words "tobacco products", and removing paragraph (c) which contains an obsolete transitional rule.

Par. 29. Section 270.162 is amended by removing the word "and" from the end of paragraph (b)(4), by redesignating paragraph (b)(5) as (b)(6), and adding a new paragraph (b)(5) to read as follows:

(b)(5) the amount of chewing tobacco and snuff removed subject to tax during the return period, and

§ 270.165a [Amended]

Par. 30. Section 270.165a is amended by removing the words "cigars, cigarettes, cigarette papers, and cigarette tubes" wherever they appear and replacing them with the words "tobacco products, cigarette papers, and cigarette tubes" and by removing the words "cigars and/or cigarettes" wherever they appear and replacing them with the words "tobacco products".

§ 270.166 [Amended]

Par. 31. Section 270.166 is amended by removing the words "cigars and cigarettes" wherever they appear and replacing them with the words "tobacco products".

§ 270.167 [Amended]

Par. 32. Section 270.167 is amended by removing the words "cigars and/or cigarettes" wherever they appear and replacing them with the words "tobacco products".

§ 270.168 [Amended]

Par. 33. Section 270.168 is amended by removing the words "cigars and cigarettes" wherever they appear and replacing them with the words "tobacco products."

Par. 34. Section 270.182 is amended by revising the introductory text and paragraph (a) to read as follows:

§ 270.182 Record of tobacco.

The record of a manufacturer of tobacco products shall show the date and total quantity in pounds, of all tobacco other than tobacco products:

(a) Received (including tobacco resulting from reduction of cigars, cigarettes, and unpackaging of smokeless tobacco), together with the name and address of the person from whom received;

* * * * *

§ 270.183 [Amended]

Par. 35. The heading of section 270.183 is amended by removing the words "cigars and cigarettes" and replacing them with the words "tobacco products" and the introductory text is revised to read as follows:

"The record of a manufacturer of tobacco products shall show the date and total quantities of all tobacco products, by kind (small cigars-large cigars; small cigarettes-large cigarettes; chewing tobacco-snuff):"

Par. 36. Section 270.183(g)(6) is amended by removing the word "tobacco" and replacing it with the word "materials".

§ 270.184 [Amended]

Par. 37. Section 270.184 is amended by removing the words "cigars and/or cigarettes" wherever they appear and replacing them with the words "tobacco products".

§ 270.186 [Amended]

Par. 38. Section 270.186 is amended by removing the words "cigars and/or cigarettes" wherever they appear and replacing them with the words "tobacco products".

§ 270.201 [Amended]

Par. 39. Section 270.201 is amended by removing the words "cigars, cigarettes" wherever they appear and replacing them with the words "tobacco products".

§ 270.202 [Amended]

Par. 40. Section 270.202 is amended by removing the words "cigars and cigarettes" wherever they appear and replacing them with the words "tobacco products"; and by adding the parenthetical "(Approved by the Office of Management and Budget under Control No. 1512-0358)" at the end of the section.

§ 270.211 [Amended]

Par. 41. Section 270.211 is amended by removing the words "cigars and/or cigarettes" wherever they appear and replacing them with the words "tobacco products."

§ 270.212 [Amended]

Par. 42. Section 270.212 is amended by removing the words "cigars or cigarettes" and replacing them with the words "tobacco products" and by removing the word "both" in the fourth sentence.

Par. 43. Section 270.216 is added to read as follows:

§ 270.216 Notice for smokeless tobacco.

Every package of chewing tobacco or snuff shall, before removal subject to tax, have adequately imprinted thereon, or on a label securely affixed thereto, the designation "chewing tobacco" or "snuff", and a clear statement of the actual pounds and ounces of the product contained therein.

Par. 44. Section 270.216a is added to read as follows:

§ 270.216a Transitional rule.

Notwithstanding the provisions of § 270.212 and 270.216 as they relate to smokeless tobacco, manufacturers of smokeless tobacco may continue to use packaging in use prior to July 1, 1986 until February 27, 1987.

§ 270.217 (Amended)

Par. 45. Section 270.217 is amended by removing the words "cigars and/or cigarettes" wherever they appear and replacing them with the words "tobacco products".

Par. 46. The undesignated centerheading following § 270.217 is revised to read "Exemption From Taxes on Tobacco Products."

Par. 47. Section 270.231 is revised to read as follows:

§ 270.231 Consumption by employees.

A manufacturer of tobacco products may gratuitously furnish tobacco products, without determination and payment of tax, for personal consumption by employees in the factory in such quantities as desired. Each employee may also be gratuitously furnished by the manufacturer, for off-factory personal consumption, not more than 5 large cigars or cigarettes, or 20 small cigars or cigarettes, or 1 retail package of chewing tobacco or snuff, or a proportionate quantity of each tobacco product, without determination and payment of tax, on each day the employee is at work. For the purposes of this section, the term "employee" shall mean those persons whose duties require their presence in the factory or whose duties relate to the manufacture, distribution, or sale of tobacco products and who receive compensation from the manufacturer, or a parent, subsidiary, or auxiliary company or corporation of the manufacturer. Such product furnished for off-factory consumption shall be furnished to the employee within the factory and taken from the factory by the employee on the day for which furnished. Employees shall not sell, offer for sale, or give away products so furnished.

§ 270.232 (Amended)

Par. 48. Section 270.232 is amended by removing the words "cigars and/or cigarettes" wherever they appear and replacing them with the words "tobacco products."

§ 270.233 [Amended]

Par. 49. Section 270.233 is amended by removing the words "cigars and/or cigarettes" wherever they appear and replacing them with the words "tobacco products".

§ 270.234 [Amended]

Par. 50. Section 270.234 is amended by removing the words "cigars and/or cigarettes" wherever they appear and replacing them with the words "tobacco products".

§ 270.235 [Amended]

Par. 51. Section 270.235 is amended by removing the words "cigars and/or cigarettes" wherever they appear and replacing them with the words "tobacco products".

§ 270.236 [Amended]

Par. 52. Section 270.236 is amended by removing the words "cigars and/or cigarettes" wherever they appear and replacing them with the words "tobacco products".

Par. 53. The undesignated centerheading following § 270.236 is revised to read "Other Provisions Relating to Tobacco Products."

§ 270.251 [Amended]

Par. 54. Section 270.251 is amended by removing the words "cigars and/or cigarettes" wherever they appear and replacing them with the words "tobacco products."

Par. 55. Section 270.252 is revised to read as follows:

§ 270.252 Reduction of tobacco products to materials.

A manufacturer may reduce tobacco products to materials without supervision. If the tobacco products have been entered in the factory record as manufactured or received, and entry shall be made in such record of the kind and quantity of cigars, cigarettes, or smokeless tobacco reduced to materials and of the quantity of tobacco resulting from the reduction. Where the manufacturer intends to file claims for credit allowance, or refund of tax on such tobacco products, he shall comply with the provisions of §§ 270.311 and 270.313.

§ 270.253 [Amended]

Par. 56. Section 270.253 is amended by removing the words "cigars and/or cigarettes" wherever they appear and replacing them with the words "tobacco products".

§ 270.254 [Amended]

Par. 57. Section 270.254 is amended by removing the words "cigars and/or cigarettes" wherever they appear and replacing them with the words "tobacco products."

Par. 58. Section 270.255 is revised to read as follows:

§ 270.255 Shortages and overages in inventory.

Whenever a manufacturer of tobacco products makes a physical inventory of packaged tobacco products in bond, either as part of normal operations or when required by an ATF officer, and such inventory discloses a shortage or overage in such products by kind as recorded and reported (i.e., small cigarettes, large cigarettes, small cigars, large cigars, chewing tobacco, or snuff), the manufacturer shall enter such shortage or overage in the records required by § 270.183. Shortages or overages in inventories made at different times may not be used to offset each other, but shall be recorded and reported separately. Unless the manufacturer establishes that a shortage was not caused by a removal subject to the tax the manufacturer shall determine the tax on any shortage, make an adjustment in Schedule A of his next semimonthly tax return and pay the tax thereon. If, after paying the tax on a shortage, the manufacturer satisfactorily establishes that the shortage was not caused by a removal subject to tax, then such payment would be an overpayment of tax which the manufacturer may recover as provided in § 270.286. Where the manufacturer can establish prior to paying the tax on a shortage, that the shortage was not the result of a removal subject to tax he shall submit an explanation of such shortage with his report for the month in which the shortage was disclosed and, if appropriate, he may file claim for remission of tax liability as provided in § 270.287. When an overage is disclosed which the manufacturer can explain, he shall include such explanation in his monthly report and refund of any overpayment may be recovered as provided in § 270.286. Whenever a physical inventory discloses a shortage or overage of tobacco products which have not been packaged the manufacturer shall appropriately enter such shortage or overage in his records and shall, at the time required by the Regional Director (Compliance), furnish an explanation in the form of a claim for remission of tax liability as provided in § 270.287. The manufacturer shall pay the tax on any shortage or portion thereof for which he is unable to furnish an explanation acceptable to the Regional Director (Compliance).

§ 270.281 [Amended]

Par. 59. Section 270.281 is amended by removing the words "cigars and/or cigarettes" wherever they appear and replacing them with the words "tobacco products".

§ 270.282 [Amended]

Par. 60. Section 270.282 is amended by removing the words "cigars and/or cigarettes" wherever they appear and replacing them with the words "tobacco products".

§ 270.283 [Amended]

Par. 61. Section 270.283 is amended by removing the words "cigars and/or cigarettes" wherever they appear and replacing them with the words "tobacco products".

§ 270.284 [Amended]

Par. 62. Section 270.284 is amended by removing the words "cigars and/or cigarettes" wherever they appear and replacing them with the words "tobacco products".

§ 270.286 [Amended]

Par. 63. Section 270.286 is amended by removing the words "cigars and/or cigarettes" wherever they appear and replacing them with the words "tobacco products".

§ 270.287 [Amended]

Par. 64. Section 270.287 is amended by removing the words "cigars and/or cigarettes" wherever they appear and replacing them with the words "tobacco products".

Par. 65. The undesignated centerheading following § 270.287 is revised to read "Tobacco Products Lost or Destroyed".

§ 270.301. [Amended]

Par. 66. Section 270.301 is amended by removing the words "cigars and cigarettes" wherever they appear and replacing them with the words "tobacco products".

Par. 67. The undesignated centerheading following § 270.301 is revised to read "Tobacco Products Withdrawn From the Market."

§ 270.311 [Amended]

Par. 68. Section 270.311(a) is amended by removing the first sentence and replacing it with the following sentence: "Where tobacco products are withdrawn from the market and the manufacturer desires to file claim under the provisions of § 270.282 or § 270.283, he shall assemble the products in or adjacent to a factory if they are to be returned to bond or at any suitable place if they are to be destroyed or reduced to materials."

§ 270.312 [Amended]

Par. 69. Section 270.312 is amended by removing the words "cigars and/or cigarettes" wherever they appear and replacing them with the words "tobacco products".

§ 270.313 [Amended]

Par. 70. In 270.313 the heading is revised to read "Disposition of tobacco products and schedule" and the text is amended by removing the words "cigars and/or cigarettes" anywhere they appear and replacing them with the words "tobacco products".

§ 270.331 [Amended]

Par. 71. Section 270.331 is amended by removing the words "cigars and/or cigarettes" wherever they appear and replacing them with the words "tobacco products".

Sec. B. The regulations in 27 CFR Part 275 are amended as follows:

Authority and Issuance

27 CFR Part 275 is amended as follows:

PART 275—[AMENDED]

Paragraph 1. The authority citation for Part 275 is revised to read as follows:

Authority: 5 U.S.C. 552(a), 26 U.S.C. 5701, 5703, 5704, 5705, 5708, 5722, 5723, 5741, 5762, 5763, 6301, 6302, 6313, 6404, 7101, 7212, 7342, 7606, 7652, 7652(a), 7805, 31 U.S.C. 9301, 9303, 9304, 9306.

Par. 2. The table of contents to Part 275 is amended by replacing the words "cigars, cigarettes," with the words "tobacco products" in the following section headings, §§ 275.1, 275.25, 275.62, 275.174 and the titles of Subpart F and Subpart G; the following new sections are added, §§ 275.33, 275.72, and 275.72a; replacing the words "cigars, cigarettes, and replacing them with the words "tobacco products" in the undesignated centerheadings following §§ 275.81, 275.101, 275.108, 275.129, 275.163 and 275.165; and by replacing the words "Destruction or reduction to tobacco" with the words "Reduction of tobacco products to materials" in §§ 275.170 and 275.171 to read as follows:

PART 275—IMPORTATION OF TOBACCO PRODUCTS AND CIGARETTE PAPERS AND TUBES

Subpart A—Scope of Regulations

Sec.
275.1 Importation of tobacco products and cigarette papers and tubes.

* * * * *

275.25 Disposal of forfeited, condemned, and abandoned tobacco products and cigarette papers and tubes.

* * * * *

275.33 Smokeless tobacco.

* * * * *

275.62 Customs' collection of internal revenue taxes on tobacco products and cigarette papers and tubes, imported or brought into the United States.

* * * * *

275.72 Notice of smokeless tobacco.
275.72a Transitional rule.

* * * * *

Subpart F—Tobacco Products and Cigarette Papers and Tubes, Imported Into or Returned to the United States

275.81 Taxpayment.

Release From Customs Custody of Tobacco Products and Cigarette Papers and Tubes Without Payment of Tax or Certain Duty

* * * * *

Subpart G—Puerto Rican Tobacco Products and Cigarette Papers and Tubes, Brought Into the United States

275.101 General.

Prepayment of Tax in Puerto Rico on Tobacco Products and Cigarette Papers and Tubes

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Deferred Payment of Tax in Puerto Rico on Tobacco Products

* * * * *

Release of Puerto Rican Tobacco Products and Ciagrette Papers and Tubes from Customs Custody, Without Payment of Tax

* * * * *

Tobacco Products and Cigarette Papers and Tubes Lost or Destroyed

275.165 Action by taxpayer.

Tobacco Products and Cigarette Papers and Tubes Withdrawn From the Market

* * * * *

275.170 Reduction of tobacco products to materials, action by regional director (Compliance).
275.171 Reduction of tobacco products to materials, action by regional director (Compliance).

* * * * *

275.174 Disposition of tobacco products and cigarette papers and tubes, and schedule.

* * * * *

§ 275.1 [Amended]

Par. 3. Section 275.1 is amended by removing the words "cigars, cigarettes." wherever they appear and replacing them with the words "tobacco products".

§ 275.11 [Amended]

Par. 4. Section 275.11 is amended by revising the definitions of bonded manufacturer, computation or computed, determined or determination, factory, importer, manufacturer of tobacco products, package, removal or remove, tobacco products, and by adding new definitions for chewing tobacco, smokeless tobacco and snuff to read as follows:

Bonded manufacturer, "A manufacturer of tobacco products in Puerto Rico who has an approved bond, in accordance with the provisions of this part, authorizing him to defer the payment in Puerto Rico on the internal revenue tax imposed on such products by 26 U.S.C. 7652(a) as provided in this part.

* * * * *

Chewing Tobacco. "Any leaf tobacco that is not intended to be smoked."

* * * * *

Computation or computed. "When used with respect to the tax on tobacco products of Puerto Rican manufacture, computation or computed shall mean that the bonded manufacturer has ascertained the quantity and kind (small cigars, large cigars, small cigarettes, large cigarettes, chewing tobacco, and snuff) of tobacco products and wholesale price of large cigars being shipped to the United States; that the payment, in Puerto Rico, of the tax on such products to be deferred under Subpart G of this part; that the tax imposed on such products by 26 U.S.C. 7652(a) has been calculated; that the bonded manufacturer has executed an agreement to pay the internal revenue tax which will become due with respect to such products, as provided in this part; and that an ATF officer has verified and executed a certification of such calculation.

Determined or determination. "When used with respect to the internal revenue tax on tobacco products and cigarette papers and tubes, determined or determination shall mean that the quantity and kind (small cigars, large cigars, small cigarettes, large cigarettes, chewing tobacco, snuff) of tobacco products and wholesale price of large cigars, or the number of books or sets of cigarette papers of each different numerical content, or the number of cigarette tubes, to be removed subject to internal revenue tax, has been established as prescribed by this part so that the internal revenue tax payable with respect thereto may be calculated.

* * * * *

Factory. "The premises of a manufacturer of tobacco products or cigarette papers or tubes in which he carries on such business."

* * * * *

Importer. "Any person in the United States to whom non-taxpaid tobacco products or cigarette papers or tubes manufactured in a foreign country, Puerto Rico, the Virgin Islands, or a possession of the United States are shipped or consigned; any person who removes cigars for sale or consumption in the United States from a Customs bonded manufacturing warehouse; and any person who smuggles or otherwise unlawfully brings tobacco products or cigarette papers or tubes into the United States.

* * * * *

Manufacturer of tobacco products. "Any person who manufactures cigars, cigarettes, or smokeless tobacco, except that such term shall not include (a) a person who produces tobacco products solely for his own personal consumption or use; or (b) a proprietor of a Customs bonded manufacturing warehouse with respect to the operation of such warehouse."

Package. "The container in which tobacco products or cigarette papers or tubes are put up by the manufacturer or the importer for delivery to the consumer."

* * * * *

Removal or remove. "The removal of tobacco products or cigarette papers or tubes from the factory or release from customs custody, including the smuggling or other unlawful importation of such articles into the United States."

* * * * *

Smokeless tobacco. "Any chewing tobacco or snuff."

Snuff. "Any finely cut, ground, or powdered tobacco that is not intended to be smoked."

Tobacco products. "Cigars, cigarettes, and smokeless tobacco. The term does not include smoking tobacco."

* * * * *

§ 275.21 [Amended]

Par. 5. Section 275.21(c) is amended to change the address of the ATF Distribution Center to: 7943 Angus Court, Springfield, Virginia 22153.

§ 275.23 [Amended]

Par. 6. Section 275.23 is amended by removing the words "cigars, cigarettes," and replacing them with the words "tobacco products".

§ 275.25 [Amended]

Par. 7. Section 275.25 the heading is amended by removing the words "cigars, cigarettes," and replacing them with the words "tobacco products" and the text is amended by removing the words "cigars, cigarettes," and replacing them with the words "tobacco products".

Par. 8. Section 275.33 is added and reads as follows:

§ 275.33 Smokeless tobacco.

On smokeless tobacco, manufactured in or imported into the United States, the following tax rates are imposed by law:

(a) *Snuff.* 24 cents per pound and a proportional tax at the like rate on all fractional parts of a pound.

(b) *Chewing tobacco.* 8 cents per pound and a proportional tax at the like rate on all fractional parts of a pound. (Pub. L. 99-272, 100 Stat. 82, 311; 26 U.S.C. 5701)

§ 275.40 [Amended]

Par. 9. Section 275.40 is amended by removing the words "cigars, cigarettes," wherever they appear and replacing them with the words "tobacco products".

§ 275.41 [Amended]

Par. 10. Section 275.41 is amended by removing the words "cigars, cigarettes," and replacing them with the words "tobacco products".

§ 275.50 [Amended]

Par. 11. Section 275.50 is amended by removing the words "cigars, cigarettes," and replacing them with the words "tobacco products".

§ 275.60 [Amended]

Par. 12. Section 275.60 is amended by removing the words "cigars, cigarettes," and replacing them with the words "tobacco products".

§ 275.62 [Amended]

Par. 13. Section 275.62 the heading and text are amended by removing the words "cigars, cigarettes," and replacing them with the words "tobacco products".

§ 275.63 [Amended]

Par. 14. Section 275.63 is amended by removing the words "cigars, cigarettes," wherever they appear and replacing them with the words "tobacco products".

§ 275.71 [Amended]

Par. 15. Section 275.71 is amended by removing the words "cigars, cigarettes," wherever they appear and replacing them with the words "tobacco products".

Par. 16. Section 275.72 is added and reads as follows:

§ 275.72 Notice for smokeless tobacco.

Every package of chewing tobacco or snuff shall, before removal subject to tax, have adequately imprinted thereon, or on a label securely affixed thereto, the designation "chewing tobacco" or "snuff", and a clear statement of the actual pounds and ounces of the product contained therein.

Par. 17. Section 275.72a is added and reads as follows:

§ 275.72a Transitional rule.

Notwithstanding the provisions of § 275.72 as they related to smokeless tobacco, importers of smokeless tobacco may continue to use packaging in use prior to July 1, 1986 until February 27, 1987.

§ 275.75 [Amended]

Par. 18. Section 275.75 is amended by removing the words "cigars, cigarettes," and replacing them with the words "tobacco products".

Par. 19. The heading of Subpart F is revised to read as follows:

Subpart F—Tobacco Products and Cigarette Papers and Tubes, Imported Into or Returned to the United States

§ 275.81 [Amended]

Par. 20. Section 275.81 is amended by removing the words "cigars, cigarettes," wherever they appear and replacing them with the words "tobacco products".

Par. 21. Section 275.81 is amended by adding a new paragraph (c)(5) to read as follows:

(c)(5) *For smokeless tobacco:* The importer will show whether the product is chewing tobacco or snuff, the number of pounds and ounces, the rate of tax and the tax due.

Par. 22. The undesignated center heading following § 275.81 is revised to read "Release From Customs Custody of Tobacco Products and Cigarette Papers and Tubes Without Payment of Tax or Certain Duty."

§ 275.85 [Amended]

Par. 23. Section 275.85, the first sentence of text, is amended to read "Tobacco products manufactured in a foreign country, the Virgin Islands, or a possession of the United States may be released by the district director of Customs from Customs custody, without payment of internal revenue tax, for transfer to the factory of a manufacturer of tobacco products under the bond of such manufacturer."

Par. 24. Section 275.85 is amended by removing the words "cigars, cigarettes," wherever they appear and replacing them with the words "tobacco products".

§ 275.85a [Amended]

Par. 25. Section 275.85a, the first sentence, is amended by removing the words "cigars and cigarettes" and replacing them with the words "tobacco products."

Par. 26. Section 275.85a is amended by removing the words "cigars, cigarettes," in the third sentence and replacing them with the words "tobacco products".

§ 275.86 [Amended]

Par. 27. Section 275.86 is amended by removing the words "cigars, cigarettes," and replacing them wherever they appear with the words "tobacco products".

Par. 28. The heading of Subpart G is revised to read as follows:

Subpart G—Puerto Rican Tobacco Products and Cigarette Papers and Tubes, Brought Into the United States

§ 275.101 [Amended]

Par. 29. Section 275.101 is amended by removing the words "cigars and cigarettes" wherever they appear and replacing them with the words "tobacco products".

Par. 30. Section 275.101 is amended by removing the words "cigars, cigarettes," wherever they appear and replacing them with the words "tobacco products".

Par. 31. The undesignated centerheading following § 275.101 is revised to read "Prepayment of Tax in Puerto Rico on Tobacco Products and Cigarette Papers and Tubes".

Par. 32. Section 275.105 is revised to read as follows:

§ 275.105 Prepayment of tax.

To prepay, in Puerto Rico, the internal revenue tax imposed by 26 U.S.C. 7652(a), on tobacco products and cigarette papers and tubes of Puerto Rican manufacture which are to be shipped to the United States, the shipper shall file, or cause to be filed, with the Officer-in-Charge, a tax return, Form 3073, in triplicate, with full remittance of tax which will become due on such tobacco products and cigarette papers and tubes. The Officer-in-Charge will present a receipted copy of the return to the person filing the return and paying the tax, retain one copy, and forward the remaining copy to the Regional Director (Compliance), Bureau of Alcohol, Tobacco and Firearms, New York, NY. The person who filed the return and prepaid the tax shall present the receipted copy of the return to the ATF officer assigned by the Chief, Puerto Rico Operations, to inspect the tobacco products and cigarette papers and tubes to be shipped to the United States. Such officer will endorse the receipted copy of the return to show release of the tobacco products and cigarette papers and tubes, or, if less than the quantity of tobacco products and cigarette papers and tubes covered by the return is released, to show (a) the numbers of small cigarettes, large cigarettes, and small cigars, (b) the number and total wholesale price of large cigars with a wholesale price of not more than $235.294 per thousand,

(c) the number of large cigars with a wholesale price of more than $235.294 per thousand, (d) the number of books or sets of cigarette papers of each different numerical content, (e) the number of cigarette tubes, in fact released, and (f) the pounds of chewing tobacco and snuff and will return such copy to the taxpayer.

§ 275.106 [Amended]

Par. 33. Section 275.106 is amended by removing the words "cigars, cigarettes," wherever they appear and replacing them with the words "tobacco products".

§ 275.107 [Amended]

Par. 34. Section 275.107 is amended by removing the words "cigars, cigarettes," wherever they appear and replacing them with the words "tobacco products", by deleting the word "and" at the end of paragraph (d), and inserting "and" after paragraph (e), by removing the period at the end of paragraph (e), and by adding a new paragraph (f) to read as follows:

"(f) the pounds and ounces of chewing tobacco and snuff".

Par. 35. The undesignated centerheading following § 275.107 is revised to read "Deferred Payment of Tax in Puerto Rico on Tobacco Products."

§ 275.109 [Amended]

Par. 36. Section 275.109 is amended by removing the words "cigars and/or cigarettes" wherever they appear and replacing them with the words "tobacco products".

§ 275.110 [Amended]

Par. 37. Section 275.110 is amended by removing the words "cigars and cigarettes" wherever they appear and replacing them with the words "tobacco products" and by revising paragraph (d), redesignating paragraph (e) as (f), and adding a new paragraph (e) to read as follows:

"(d) the pounds and ounces of chewing tobacco or snuff to be shipped, (e) the amount of the tax to be paid on such products under the provisions of this subpart, and"

§ 275.111 [Amended]

Par. 38. Section 275.111 is amended by removing the words "cigars and cigarettes" wherever they appear and replacing them with the words "tobacco products".

§ 275.112 [Amended]

Par. 39. Section 275.112 is amended by removing the words "cigars and cigarettes" in the first sentence and replacing them with the words "tobacco products"; by redesignating paragraph (e) as paragraph (f); by adding a new paragraph (e); and by removing the "and" at the end of paragraph (d) to read as follows:

(e) the pounds and ounces of smokeless tobacco upon which tax has been computed, and

§ 275.115a [Amended]

Par. 40. Section 275.115a is amended by removing the words "cigars, cigarettes," wherever they appear and replacing them with the words "tobacco products".

§ 275.116 [Amended]

Par. 41. Section 275.116 is amended by removing the words "cigars or cigarettes" and replacing them with the words "tobacco products".

§ 275.117 [Amended]

Par. 42. Section 275.117 is amended by removing the words "cigars and cigarettes" wherever they appear and replacing them with the words "tobacco products"; by removing the word "and" at the end of paragraph (b); by adding "and" before the period at the end of paragraph (c); and by adding a new paragraph (d) to read as follows: "(d) pounds and ounces of chewing tobacco and snuff".

§ 275.120 [Amended]

Par. 43. Section 275.120 is amended by removing the words "cigars and cigarettes" and replacing them with the words "tobacco products".

Par. 44. Section 275.121 is revised to read as follows:

§ 275.121 Amount of Bond.

In order that tobacco products may be shipped to the United States on computation of tax under the provisions of this subpart, the total amount of the bond or bonds shall at all times be in an amount not less than the amount of unpaid tax chargeable at any one time against the bond: *Provided,* That the amount of any such bond need not exceed $250,000 where payment of tax on cigarettes, or on any combination of tobacco products is deferred; and need not exceed $150,000 where the tax on cigars or smokeless tobacco is deferred. The amount of the bond shall in no case be less than $1,000. Where the amount of a bonded manufacturer's bond is less than the maximum prescribed, the bonded manufacturer shall maintain a running account accurately reflecting all outstanding taxes with which his bond is chargeable. He shall charge such account with the amount of tax he agreed to pay on Forms 2987 and shall credit the account for the amount he paid with his return, Form 2988, at the time he files such return.

§ 275.125 [Amended]

Par. 45. Section 275.125 is amended by removing the words "cigars and cigarettes" and replacing them with the words "tobacco products".

Par. 46. The undesignated center heading following § 275.129 is revised to read "Release of Puerto Rican Tobacco Products and Cigarette Papers and Tubes From Customs Custody, Without Payment of Tax".

§ 275.135 [Amended]

Par. 47. Section 275.135 is amended by removing the words "cigars, cigarettes" and replacing them with the words "tobacco products".

§ 275.136 [Amended]

Par. 48. Section 275.136 is amended by removing the words "cigars, cigarettes," wherever they appear and replacing them with the words "tobacco products".

§ 275.137 [Amended]

Par. 49. Section 275.137 is amended by removing the words "cigars, cigarettes," wherever they appear and replacing them with the words "tobacco products".

§ 275.138 [Amended]

Par. 50. Section 275.138 is amended by removing the words "cigars, cigarettes," and replacing them with the words "tobacco products".

§ 275.139 [Amended]

Par. 51. Section 275.139 is amended by removing the words "cigars, cigarettes," and replacing them with the words "tobacco products" and by removing the words "cigars and/or cigarettes" wherever they appear and replacing them with the words "tobacco products" and by revising paragraph (a) to read "(a) Date, quantity, kind of cigars, cigarettes, and smokeless tobacco (number of small cigars—large cigars; number of small cigarettes—large cigarettes; pounds and ounces of chewing tobacco—snuff)."

§ 275.140 [Amended]

Par. 52. Section 275.140 is amended by removing the words "cigars and/or cigarettes" wherever they appear and replacing them with the words "tobacco products" and by removing the words "cigars, cigarettes" and replacing them with the words "tobacco products".

§ 275.141 [Amended]

Par. 53. Section 275.141 is amended by removing the words "cigars, cigarettes," and by removing the words "cigars and cigarettes" wherever they appear and replacing them with the words "tobacco products".

§ 275.161 [Amended]

Par. 54. Section 275.161 is amended by removing the words "cigars, cigarettes," and replacing them with the words "tobacco products".

§ 275.162 [Amended]

Par. 55. Section 275.162 is amended by removing the words "cigars, cigarettes," and replacing them with the words "tobacco products".

§ 275.163 [Amended]

Par. 56. Section 275.163 is amended by removing the words "cigars, cigarettes," wherever they appear and replacing them with the words "tobacco products".

Par. 57. The undesignated centerheading following § 275.163 is revised to read "Tobacco Products and Cigarette Papers and Tubes Lost or Destroyed".

§ 275.165 [Amended]

Par. 58. Section 275.165 is amended by removing the words "cigars, cigarettes," and replacing them with the words "tobacco products".

Par. 59. The undesignated centerheading following § 275.165 is revised to read "Tobacco Products and Cigarette Papers and Tubes Withdrawn From the Market".

§ 275.170 [Amended]

Par. 60. Section 275.170 the heading and text are amended by removing the words "reduction to tobacco" wherever they appear and replacing them with the words "reduction to materials" and by removing the words "cigars, cigarettes," wherever they appear and replacing them with the words "tobacco products".

§ 275.171 [Amended]

Par. 61. Section 275.171 the heading and text are amended by removing the words "reduction to tobacco" wherever they appear and replacing them with the words "reduction to materials" and by removing the words "cigars and cigarettes" wherever they appear and replacing them with the words "tobacco products" and by removing the words "cigars, cigarettes," and replacing them with the words "tobacco products".

§ 275.172 [Amended]

Par. 62. Section 275.172 is amended by removing the words "cigars, cigarettes," wherever they appear and replacing them with the words "tobacco products".

§ 275.173 [Amended]

Par. 63. Section 275.173 is amended by removing the words "cigars, cigarettes" wherever they appear and replacing them with the words "tobacco products".

§ 275.174 [Amended]

Par. 64. Section 275.174 is amended by removing the words "cigars, cigarettes," and replacing them with the words "tobacco products" and by removing the words "cigars and cigarettes" and replacing them with the words "tobacco products" and by removing the words "to tobacco" and replacing them with the words "to materials".

Sec. C. The Regulations in 27 CFR Part 290 are amended as follows:

Authority and Issuance

27 CFR Part 290 is amended as follows:

Paragraph 1. The authority citation for Part 290 is revised to read as follows:

Authority: 5 U.S.C. 552(c), 18 U.S.C. 1301, 19 U.S.C. 81c, 1317, 1622, 26 U.S.C. 5703, 5704, 5705, 5711, 5712, 5713, 5721, 5722, 5723, 5741, 5751, 6402, 6404, 6423, 7212, 7342, 7606, 7805, 31 U.S.C. 9301, 9303, 9304, 9306, 44 U.S.C. 3504(h).

Par. 2. The heading of Part 290 is revised to read as follows:

PART 290—EXPORTATION OF TOBACCO PRODUCTS AND CIGARETTE PAPERS AND TUBES, WITHOUT PAYMENT OF TAX, OR WITH DRAWBACK OF TAX

Par. 3. The table of sections for Part 290 is amended by replacing the words "cigars, cigarettes," with the words "tobacco products" in the following headings §§ 290.1, 290.62, 290.63, 290.64, 290.65, Subpart J, 290.213, 290.255, and 290.266 to read as follows:

Subpart A—Scope of Regulations

Sec.
290.1 Exportation of tobacco products and cigarette papers and tubes, without payment of tax, or with drawback of tax.

* * * * *

290.62 Restrictions on deliveries of tobacco products and cigarette papers and tubes to vessels and aircraft as supplies.

* * * * *

290.63 Restrictions on disposal of tobacco products and cigarette papers and tubes on vessels and aircraft.

* * * * *

290.64 Responsibility for delivery or exportation of tobacco products and cigarette papers and tubes.

* * * * *

290.65 Liability for tax on tobacco products and cigarette papers and tubes.

* * * * *

Subpart J—Removal of Shipments of Tobacco Products and Cigarette Papers and Tubes by Manufacturers and Export Warehouse Proprietors

* * * * *

290.213 Destruction of tobacco products and cigarette papers and tubes.

* * * * *

290.225 Delivery of tobacco products or cigarette papers or tubes for export other than by parcel post.

* * * * *

290.226 Delivery of tobacco products and cigarette papers and tubes for export by parcel post.

* * * * *

§ 290.1 [Amended]

Par. 4. Section 290.1 the heading and text are amended by replacing the words "cigars, cigarettes," wherever they appear with the words "tobacco products".

§ 290.2 [Amended]

Par. 5. Section 290.2 is amended to change the address of the ATF Distribution Center to 7943 Angus Court, Springfield, Virginia 22153.

[§ 290.11 [Amended]

Par. 6. Section 290.11 is amended by adding the definition for "Chewing tobacco" to read as follows:

Chewing tobacco. Any leaf tobacco that is not intended to be smoked.

Par. 7. In § 290.11 the definition for "Exportation or export" is amended by removing the words "cigars, cigarettes," wherever they appear and replacing them with the words "tobacco products".

Par. 8. In § 290.11 the definition for "Export warehouse" is amended by removing the words "cigars, cigarettes," and replacing them with the words "tobacco products".

Par. 9. In § 290.11 the definition for "Factory" is amended by removing the words "cigars, cigarettes," and replacing them with the words "tobacco products".

Par. 10. In § 290.11 the definition for "In bond" is amended by removing the words "cigars, cigarettes," and replacing them with the words "tobacco products".

Par. 11. Section 290.11 is amended by revising the definition for "Manufacturer of tobacco products" to read as follows:

"Any person who manufactures cigars, cigarettes, or smokeless tobacco, except that such term shall not include (a) a person who produces cigars, cigarettes, or smokeless tobacco solely for his own personal consumption or use; or (b) a proprietor of a customs bonded manufacturing warehouse with respect to the operation of such warehouse."

Par. 12. Section 290.11 is amended by revising the definition for "Package" to read as follows: "The container in which tobacco products, or cigarette papers or tubes are put up by the manufacturer and delivered to the consumer.

Par. 13. In § 290.11 the definition for "Removal or remove" is amended by replacing the words "cigars, cigarettes," with the words "tobacco products".

Par. 14. Section 290.11 is amended by adding the definition for "Snuff" to read as follows:

Snuff. Any finely cut, ground, or powdered tobacco that is not intended to be smoked.

Par. 15. Section 290.11 is amended by adding the definition for "Smokeless tobacco" to read as follows: "*Smokeless tobacco.* Any snuff or chewing tobacco."

* * * * *

Par. 16. Section 290.11 is amended by adding the definition of "Tobacco products" to read as follows:

* * * * *

Tobacco products. Cigars, cigarettes, and smokeless tobacco. The term does not include smoking tobacco.

* * * * *

§ 290.61 [Amended]

Par. 17. Section 290.61 is amended by replacing the words "cigars, cigarettes," with the words "tobacco products".

§ 290.61a [Amended]

Par. 18. Section 290.61a is amended by replacing the words "cigars, cigarettes," with the words "tobacco products".

§ 290.62 [Amended]

Par. 19. Section 290.62 is amended by replacing the words "cigars, cigarettes," wherever they appear with the words "tobacco products" in the heading and text.

§ 290.63 [Amended]

Par. 20. Section 290.63 is amended by replacing the words "cigars, cigarettes," wherever they appear with the words "tobacco products" in the heading and text.

§ 290.64 [Amended]

Par. 21. Section 290.64 is amended by replacing the words "cigars, cigarettes," wherever they appear with the words "tobacco products" in the heading and text.

§ 290.65 [Amended]

Par. 22. Section 290.65 is amended by replacing the words "cigars, cigarettes," wherever they appear with the words "tobacco products" in the heading and text.

§ 290.66 [Amended]

Par. 23. Section 290.66 is amended by replacing the words "cigars, cigarettes," wherever they appear with the words "tobacco products".

§ 290.67 [Amended]

Par. 24. Section 290.67 is amended by replacing the words "cigars, cigarettes," with the words "tobacco products"; and by adding the parenthetical "(All recordkeeping requirements have been approved under OMB Control No. 1512-0180)" at the end of the section.

§ 290.69 [Amended]

Par. 25. Section 290.69 is amended by replacing the words "cigars, cigarettes," with the words "tobacco products".

§ 290.70 [Amended]

Par. 26. Section 290.70 is amended by replacing the words "cigars, cigarettes," with the words "tobacco products".

Par. 27. Section 290.90 is revised to read as follows:

§ 290.90 Restrictions relating to export warehouse premises.

Export warehouse premises shall be used exclusively for the storage of tobacco products and cigarette papers and tubes, upon which the internal revenue tax has not been paid, for subsequent removal under this part; Provided, that smoking tobacco may also be stored in an export warehouse.

§ 290.112 [Amended]

Par. 28. Section 290.112 is amended by replacing the words "cigars, cigarettes," with the words "tobacco products".

§ 290.123 [Amended]

Par. 29. Section 290.123 is amended by replacing the words "cigars, cigarettes," with the words "tobacco products".

§ 290.142 [Amended]

Par. 30. Section 290.142 is amended by replacing the words "cigars, cigarettes," wherever they appear with the words "tobacco products".

Par. 31. Section 290.143 is revised to read as follows:

§ 290.143 General.

(a) Every export warehouse proprietor shall make a true and accurate inventory on ATF Form 3373 (5220.3) to the Regional Director (Compliance), of the numbers of (1) small cigars, (2) large cigars, (3) small cigarettes, (4) large cigarettes, (5) cigarette papers, and (6) cigarette tubes; and the pounds and ounces of (7), chewing tobacco, and (8) snuff, held by him at the times specified in this subpart.

(b) This inventory shall be subject to verification by an ATF officer. A copy of each inventory shall be retained by the export warehouse proprietor for 2 years following the close of the calendar year in which the inventory is made and shall be made available for inspection by any ATF officer upon his request.

§ 290.147 [Amended]

Par. 32. Section 290.147 is amended by replacing the words "cigars, cigarettes," wherever they appear with the words "tobacco products".

§ 290.152 [Amended]

Par. 33. Section 290.152 is amended by replacing the words "cigars, cigarettes," wherever they appear with the words "tobacco products".

§ 290.153 [Amended]

Par. 34. Section 290.153 is amended by replacing the words "cigars, cigarettes," wherever they appear with the words "tobacco products".

§ 290.154 [Amended]

Par. 35. Section 290.154 is amended by replacing the words "cigars, cigarettes," wherever they appear with the words "tobacco products".

Par. 36. The heading of Subpart J is revised to read as follows:

Subpart J—Removal of Shipments of Tobacco Products and Cigarette Papers and Tubes by Manufacturers and Export Warehouse Proprietors

§ 290.181 [Amended]

Par. 37. Section 290.181 is amended by replacing the words "cigars, cigarettes," wherever they appear with the words "tobacco products".

§ 290.182 [Amended]

Par. 38. Section 290.182 is amended by replacing the words "cigars, cigarettes," wherever they appear with the words "tobacco products".

§ 290.183 [Amended]

Par. 39. Section 290.183 is amended by replacing the words "cigars, cigarettes," wherever they appear with the words "tobacco products".

§ 290.184 [Amended]

Par. 40. Section 290.184 is amended by replacing the words "cigars and cigarettes," wherever they appear with the words "tobacco products".

§ 290.185 [Amended]

Par. 41. Section 290.185 is amended by removing the words "cigars or cigarettes," wherever they appear and replacing them with the words "tobacco products".

§ 290.187 [Amended]

Par. 42. Section 290.187 is amended by replacing the words "cigars, cigarettes," wherever they appear with the words "tobacco products".

§ 290.188 [Amended]

Par. 43. Section 290.188 is amended by replacing the words "cigars, cigarettes," wherever they appear with the words "tobacco products".

§ 290.189 [Amended]

Par. 44. Section 290.189 is amended by replacing the words "cigars, cigarettes," wherever they appear with the words "tobacco products".

§ 290.190 [Amended]

Par. 45. Section 290.190 is amended by replacing the words "cigars, cigarettes," wherever they appear with the words "tobacco products".

§ 290.191 [Amended]

Par. 46. Section 290.191 is amended by replacing the words "cigars, cigarettes," wherever they appear with the words "tobacco products".

§ 290.192 [Amended]

Par. 47. Section 290.192 is amended by replacing the words "cigars, cigarettes," wherever they appear with the words "tobacco products".

§ 290.193 [Amended]

Par. 48. Section 290.193 is amended by replacing the words "cigars, cigarettes," wherever they appear with the words "tobacco products".

§ 290.194 [Amended]

Par. 49. Section 290.194 is amended by replacing the words "cigars, cigarettes," wherever they appear with the words "tobacco products".

§ 290.195 [Amended]

Par. 50. Section 290.195 is amended by replacing the words "cigars, cigarettes," wherever they appear with the words "tobacco products".

§ 290.196 [Amended]

Par. 51. Section 290.196 is amended by replacing the words "cigars, cigarettes," wherever they appear with the words "tobacco products".

§ 290.196a [Amended]

Par. 52. Section 290.196a is amended by replacing the words "cigars, cigarettes," wherever they appear with the words "tobacco products".

§ 290.197 [Amended]

Par. 53. Section 290.197 is amended by replacing the words "cigars, cigarettes," wherever they appear with the words "tobacco products".

§ 290.198 [Amended]

Par. 54. Section 290.198 is amended by replacing the words "cigars, cigarettes," wherever they appear with the words "tobacco products".

§ 290.200 [Amended]

Par. 55. Section 290.200 is amended by replacing the words "cigars, cigarettes," wherever they appear with the words "tobacco products".

§ 290.201 [Amended]

Par. 56. Section 290.201 is amended by replacing the words "cigars, cigarettes," wherever they appear with the words "tobacco products".

§ 290.202 [Amended]

Par. 57. Section 290.202 is amended by replacing the words "cigars, cigarettes," wherever they appear with the words "tobacco products".

§ 290.203 [Amended]

Par. 58. Section 290.203 is amended by replacing the words "cigars, cigarettes," wherever they appear with the words "tobacco products".

§ 290.204 [Amended]

Par. 59. Section 290.204 is amended by replacing the words "cigars, cigarettes," wherever they appear with the words "tobacco products".

§ 290.205 [Amended]

Par. 60. Section 290.205 is amended by replacing the words "cigars, cigarettes," wherever they appear with the words "tobacco products".

§ 290.206 [Amended]

Par. 61. Section 290.206 is amended by replacing the words "cigars, cigarettes," wherever they appear with the words "tobacco products".

§ 290.207 [Amended]

Par. 62. Section 290.207 is amended by replacing the words "cigars, cigarettes," wherever they appear with the words "tobacco products".

§ 290.207a [Amended]

Par. 63. Section 290.207a is amended by replacing the words "cigars, cigarettes," wherever they appear with the words "tobacco products".

§ 290.208 [Amended]

Par. 64. Section 290.208 is amended by replacing the words "cigars, cigarettes," wherever they appear with the words "tobacco products".

§ 290.210 [Amended]

Par. 65. Section 290.210 is amended by replacing the words "cigars, cigarettes," wherever they appear with the words "tobacco products".

§ 290.212 [Amended]

Par. 66. Section 290.212 is amended by replacing the words "cigars, cigarettes," wherever they appear with the words "tobacco products".

§ 290.213 [Amended]

Par. 67. Section 290.213 is amended by replacing the words "cigars, cigarettes," wherever they appear with the words "tobacco products" in the heading and text.

§ 290.221 [Amended]

Par. 68. Section 290.221 is amended by replacing the words "cigars, cigarettes," wherever they appear with the words "tobacco products".

§ 290.222 [Amended]

Par. 69. Section 290.222 is amended by replacing the words "cigars, cigarettes," wherever they appear with the words "tobacco products".

§ 290.223 [Amended]

Par. 70. Section 290.233 is amended by replacing the words "cigars, cigarettes," wherever they appear with the words "tobacco products".

§ 290.224 [Amended]

Par. 71. Section 290.224 is amended by replacing the words "cigars, cigarettes," wherever they appear with the words "tobacco products".

§ 290.225 [Amended]

Par. 72. Section 290.225 is amended by replacing the words "cigars, cigarettes," wherever they appear with the words "tobacco products" in the heading and text.

§ 290.226 [Amended]

Par. 73. Section 290.226 is amended by replacing the words "cigars, cigarettes," wherever they appear with the words "tobacco products" in the heading and text.

§ 290.227 [Amended]

Par. 74. Section 290.227 is amended by replacing the words "cigars, cigarettes," wherever they appear with the words "tobacco products".

§ 290.228 [Amended]

Par. 75. Section 290.228 is amended by replacing the words "cigars, cigarettes," wherever they appear with the words "tobacco products".

§ 290.229 [Amended]

Par. 76. Section 290.229 is amended by replacing the words "cigars, cigarettes," wherever they appear with the words "tobacco products".

§ 290.230 [Amended]

Par. 77. Section 290.230 is amended by replacing the words "cigars, cigarettes," wherever they appear with the words "tobacco products".

§ 290.255 [Amended]

Par. 78. Section 290.255 is amended by replacing the words "cigars, cigarettes," wherever they appear with the words "tobacco products".

§ 290.264 [Amended]

Par. 79. Section 290.264 is amended by replacing the words "cigars, cigarettes," wherever they appear with the words "tobacco products".

Sec. D. The regulations in 27 CFR Part 295 are amended as follows:

Authority and Issuance

27 CFR Part 295 is amended as follows:

Par. 1. The authority citation for Part 295 is revised to read as follows:

Authority: 26 U.S.C. 5703, 5704, 5705, 5723, 5741, 5751, 5762, 5763, 6313, 7212, 7342, 7606, 7805, 44 U.S.C. 3504(h).

Par. 2. The heading of Part 295 is revised to read as follows:

PART 295—REMOVAL OF TOBACCO PRODUCTS AND CIGARETTE PAPERS AND TUBES, WITHOUT PAYMENT OF TAX FOR USE OF THE UNITED STATES

Par. 3. The table of sections for Part 295 is amended by replacing the words "cigars, cigarettes," with the words "tobacco products" in the headings for §§ 295.1 and 295.25 and by adding the heading, Notice for Smokeless Tobacco, for § 295.43 to read as follows:

* * * * *

295.1 Removal of tobacco products and cigarette papers and tubes, without payment of tax, for use of the United States.

* * * * *

295.25 Unlawful purchases, receipt, possession, or sale of tobacco products or cigarette papers or tubes, after removal.

* * * * *

295.43 Notice for smokeless tobacco.

* * * * *

§ 295.1 [Amended]

Par. 4. In § 295.1 the heading and text are amended by replacing the words "cigars, cigarettes," with the words "tobacco products".

§ 295.11 [Amended]

Par. 5. Section 295.11 is amended by adding alphabetically the definition for "Chewing Tobacco" to read as follows: *Chewing tobacco.* Any leaf tobacco that is not intended to be smoked.

Par. 6. Section 295.11 is amended by revising the definition of "Factory" to read as follows: "The premises of a manufacturer of tobacco products or cigarette papers and tubes in which he carries on such business."

Par. 7. Section 295.11 is amended by revising the definition for "Manufacturer of tobacco products" to read as follows: "Any person who manufactures cigars, cigarettes, or smokeless tobacco, except that such term shall not include (a) a person who produces cigars, cigarettes, or smokeless tobacco, solely for his own personal consumption or use; or (b) a proprietor of a customs bonded manufacturing warehouse with respect to the operation of such warehouse."

Par. 8. Section 295.11 is amended by revising the definition of "Package" to read as follows: "The container in which tobacco products or cigarette papers or tubes are put up by the manufacturer and offered for sale or delivery to the consumer."

Par. 9. Section 295.11 is amended by revising the definition for "Removal or remove" to read as follows: "The removal of tobacco products or cigarette papers or tubes from the factory."

Par. 10. Section 295.11 is amended by adding alphabetically the definitions for "Smokeless Tobacco" and "Snuff" to read as follows: *Smokeless tobacco.* Any chewing tobacco or snuff. *Snuff.* Any finely cut, ground, or powdered tobacco that is not intended to be smoked.

Par. 11. Section 295.11 is amended by revising the definition for "Tobacco Products" to read as follows: "Cigars, cigarettes, and smokeless tobacco. The term does not include smoking tobacco."

§ 295.23 [Amended]

Par. 12. Section 295.23 is amended by replacing the words "cigars, cigarettes," with the words "tobacco products".

§ 295.25 [Amended]

Par. 13. The heading of § 295.25 and text are amended by replacing the words "cigars, cigarettes," with the words "tobacco products".

§ 295.31 [Amended]

Par. 14. Section 295.31 is amended by replacing the words "cigars, cigarettes," anywhere they appear with the words "tobacco products".

§ 295.32 [Amended]

Par. 15. Section 295.32 is amended by replacing the words "cigars, cigarettes," anywhere they appear with the words "tobacco products".

§ 295.33 [Amended]

Par. 16. Section 295.33 is amended by replacing the words "cigars, cigarettes," wherever they appear with the words "tobacco products".

§ 295.34 [Amended]

Par. 17. Section 295.34 is amended by replacing the words "cigars, cigarettes," wherever they appear with the words "tobacco products".

§ 295.35 [Amended]

Par. 18. Section 295.35 is amended by replacing the words "cigars, cigarettes," wherever they appear with the words "tobacco products".

Par. 19. Section 295.36 is revised to read as follows:

§ 295.36 Payment of tax.

Any tax which becomes due and payable on tobacco products and cigarette papers and tubes removed under this part shall be paid to the district director, for the district in which the factory from which such articles were removed is located, with sufficient information to identify the taxpayer, the nature and purpose of the payment, and the articles covered by the payment: Provided, That a manufacturer of tobacco products or cigarette papers or tubes may pay any tax for which he becomes liable under this part by an appropriate adjustment in his current tax return Form 5000.24. In paying the tax, a fractional part of a cent shall be disregarded unless it amounts to one-half cent or more, in which case it shall be increased to one cent.

§ 295.37 [Amended]

Par. 20. Section 295.37 is amended by replacing the words "cigars, cigarettes," wherever they appear with the words "tobacco products".

§ 295.41 [Amended]

Par. 21. Section 295.41 is amended by replacing the words "cigars, cigarettes," wherever they appear with the words "tobacco products".

§ 295.42 [Amended]

Par. 22. Section 295.42 is amended by replacing the words "cigars, cigarettes," wherever they appear with the words "tobacco products".

Par. 23. Section 295.43 is added to read as follows:

§ 295.43 Notice for smokeless tobacco.

Every package of chewing tobacco or snuff shall, before removal subject to tax, have adequately imprinted thereon, or on a label securely affixed thereto, the designation "chewing tobacco" or "snuff", and the quantity, expressed in pounds and ounces (if the package contains over one pound) or in ounces (if the package contains less than one pound) of such product contained therein.

§ 295.46 [Amended]

Par. 24. Section 295.46 is amended by replacing the words "cigars, cigarettes," wherever they appear with the words "tobacco products".

§ 295.51 [Amended]

Par. 25. Section 295.51 is amended by replacing the words "cigars, cigarettes," wherever they appear with the words "tobacco products".

Sec. E. The regulations in 27 CFR Part 296 are amended as follows:

Authority and Issuance

27 CFR Part 296 is amended as follows:

Paragraph 1. The authority citation for Part 296 is revised to read as follows:

Authority: 18 U.S.C. 2341-2346, 26 U.S.C. 5708, 5751, 5761-5763, 6001, 6601, 6621, 6622, 7212, 7342, 7602, 7606, 7608, 7805, 44 U.S.C. 3504(h), 49 U.S.C. 782.

Par. 2. The heading of Part 296 is revised to read as follows:

PART 296—MISCELLANEOUS REGULATIONS RELATING TO TOBACCO PRODUCTS AND CIGARETTE PAPERS AND TUBES

Par. 3. The table of sections for Part 296 is amended by replacing the words "cigars, cigarettes," with the words "tobacco products" in the headings of Subpart A and Subpart C, in the text of § 296.75, and the undesignated center heading following § 290.78 and by replacing the words "cigars and cigarettes" with the words "tobacco products" in the heading for Subpart G and § 296.166 to read as follows:

Subpart A—Application of 27 U.S.C. 6423, as Amended to Refund or Credit of Tax on Tobacco Products and Cigarette Papers and Tubes

* * * * *

296.16 * * *

Subpart C—Losses of Tobacco Products and Cigarette Papers and Tubes Caused by a Disaster Occurring After the Date of Enactment of the Excise Tax Technical Changes Act of 1958

* * * * *

296.75 Separation of imported and domestic tobacco products and cigarette papers and tubes; separate claims for taxes and duties.

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Destruction of Tobacco Products and Cigarette Papers and Tubes

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Subpart G—Dealers in Tobacco Products

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296.166 Dealing in tobacco products.

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Par. 4. The heading of Subpart A of Part 296 is revised to read as follows:

Subpart A—Application of 27 U.S.C. 6423, as Amended, to Refund or Credit of Tax on Tobacco Products, and Cigarette Papers and Tubes.

Par. 5. The heading of Subpart C of Part 296 is revised to read as follows:

Subpart C—Losses of Tobacco Products and Cigarette Papers and Tubes Caused by a Disaster Occurring After the Date of Enactment of the Excise Tax Technical Changes Act of 1958

§ 296.71 [Amended]

Par. 6. Section 296.71 is amended by replacing the words "cigars, cigarettes," with the words "tobacco products".

§ 296.72 [Amended]

Par. 7. Section 296.72 is amended by revising the definition for "Claimant" to read as follows:

"The person who held the tobacco products or cigarette papers and tubes for sale at the time of the disaster and who files claim under this subpart."

Par. 8. Section 296.72 is amended by revising the definition for "Duly authorized official" to read as follows: "Any Federal, State, or local government official in whom has been vested authority to condemn tobacco products and cigarette papers and tubes made the subject of a claim under this subpart."

Par. 9. Section 296.72 is amended by revising the definition for "removal or remove" to read as follows: "The removal of tobacco products or cigarette papers or tubes from the factory, or release of such articles from Customs custody."

Par. 10. Section 296.72 is amended by revising the definition for "Tax paid or determined" to read as follows: "The internal revenue tax on tobacco products and cigarette papers and tubes which has actually been paid, or which has been determined pursuant to 26 U.S.C. 5703(b), and regulations thereunder, at the time of their removal subject to tax payable on the basis of a return."

Par. 11. Section 296.72 is amended by revising the definition of "Tobacco products" to read as follows: "Cigars, cigarettes, and smokeless tobacco. The term does not include smoking tobacco."

§ 296.73 [Amended]

Par. 12. Section 296.73 is amended by replacing the words "cigars, cigarettes," wherever they appear with the words "tobacco products".

Par. 13. Section 296.74 is revised to read as follows:

§ 296.74 Execution and filing of claims.

Claims under this subpart shall be executed on Internal Revenue Service Form 843 in accordance with the applicable instructions on the form, and filed with the Regional Director (Compliance) of the region in which the tobacco products or cigarette papers or tubes were lost, rendered unmarketable, or condemned, within 6 months after the date on which the President makes the determination that the disaster has occurred. The claim shall state all the facts on which the claim is based, and shall set forth the number of small cigars, large cigars, (itemized separately as to the taxable wholesale price), small cigarettes, large cigarettes, cigarette papers, cigarette tubes and the pounds and ounces of chewing tobacco and snuff, as the case may be, and the rate and the amount claimed with respect to each article set forth, substantially in the form as shown in the example below:

EXAMPLE

Quantity	Article	Rate of tax	Amount
20,000	Small Cigars	$0.75 per thousand	$ 15.00
1,000	Large Cigars—Wholesale price $100 per thousand	8½ pct of wholesale price	8.50
500	Large Cigars—wholesale price $236 per thousand	$20 per thousand	10.00
10,000	Small Cigarettes	$8 per thousand	80.00
5,000	Large Cigarettes	$8.40 per thousand	42.00
2,000 sets	Cigarette papers—50 each set	$0.005 per set	10.00
1,000 sets	Cigarette Papers—100 each set	$0.01 per set	10.00
1,000	Cigarette Tubes	$0.01 per 50 tubes	0.20
100 lbs	Chewing Tobacco	$.08 per lb	8.00
200 lbs	Snuff	$.24 per lb	48.00
Total Claimed			$231.70

The claimant shall certify on the claim to the effect that no amount of internal revenue tax or customs duty claimed therein has been or will be otherwise claimed under any other provision of law or regulations.

§ 296.75 [Amended]

Par. 14. Section 296.75 heading and text are amended by replacing the words "cigars, cigarettes," with the words "tobacco products".

§ 296.76 [Amended]

Par. 15. Section 296.76 is amended by replacing the words "cigars, cigarettes," wherever they appear with the words "tobacco products".

§ 296.77 [Amended]

Par. 16. Section 296.77 is amended by replacing the words "cigars, cigarettes," with the words "tobacco products".

§ 296.78 [Amended]

Par. 17. Section 296.78 is amended by replacing the words "cigars, cigarettes," with the words "tobacco products"

Par. 18. The undesignated centerhead following § 296.78 is amended to read as follows: "Destruction of Tobacco Products and Cigarette Papers and Tubes."

§ 296.79 [Amended]

Par. 19. Section 296.79 is amended by replacing the words "cigars, cigarettes," wherever they appear with the words "tobacco products".

§ 296.80 [Amended]

Par. 20. Section 296.80 is amended by replacing the words "cigars, cigarettes," with the words "tobacco products".

Par. 21. The heading of Subpart G is revised to read as follows:

Subpart G—Dealers in Tobacco Products

§ 296.161 [Amended]

Par. 22. Section 296.161 is amended by replacing the words "cigars and cigarettes" with the words "tobacco products".

§ 296.163 [Amended]

Par. 23. Section 296.163 is amended by revising the definition for "Manufacturer of tobacco products" to read as follows: "Any person who manufactures cigars, cigarettes, or smokeless tobacco, except that such term shall not include (a) a person who produces cigars, cigarettes, or smokeless tobacco, solely for his own personal consumption or use; or (b) a proprietor of a Customs bonded manufacturing warehouse with respect to the operation of such warehouse."

Par. 24. Section 296.163 is amended by revising the definition for "Package" to read as follows: "The container in which tobacco products are put up by the manufacturer or the importer and offered for delivery to the consumer."

Par. 25. Section 296.163 is amended by revising the definition for "Removal or remove" to read as follows: "The removal of tobacco products from the factory or release from Customs custody, including the smuggling or other unlawful importation of such articles into the United States."

Par. 26. Section 296.163 is amended by revising the definition for "Tobacco products" to read as follows: "Cigars, cigarettes, and smokeless tobacco. The term does not include smoking tobacco."

§ 296.164 [Amended]

Par. 27. Section 296.164 is amended by replacing the words "cigars, or cigarettes," with the words "tobacco products".

§ 296.166 [Amended]

Par. 28. Section 296.166 the heading and text are amended by replacing the words "cigars and cigarettes" with the words "tobacco products".

§ 296.167 [Amended]

Par. 29. Section 296.167 is amended by replacing the words "cigars or cigarettes" with the words "tobacco products".

Signed: June 23, 1986.

W.T. Drake,
Acting Director.

Approved: July 2, 1986.

Francis A. Keating II,
Assistant Secretary (Enforcement).

(Filed by the Office of the Federal Register on August 4, 1986, 8:45 am and published in the Federal Register for August 5, 1986, 51 F.R. 28078)

TITLE 27—ALCOHOL, TOBACCO PRODUCTS AND FIREARMS —CHAPTER 1—BUREAU OF ALCOHOL, TOBACCO AND FIREARMS, DEPARTMENT OF THE TREASURY

Cigarettes; Increase in Rate of Tax, and Floor Stocks Tax

T.D. ATF-234

27 CFR Parts 270, 275, and 296

AGENCY: Bureau of Alcohol, Tobacco and Firearms (ATF), Treasury.

ACTION: Final rule (Treasury decision).

SUMMARY: This document implements section 13201 of The Consolidated Omnibus Budget Reconciliation Act of 1985, Pub. L. 99-272, 100 Stat. 311. This section of the Act amended 26 U.S.C. Chapter 52 by making permanent the cigarette tax increase put into effect by subsection (c) of section 283 of the Tax Equity and Fiscal Responsibility Act of 1982 (Pub. L. 97-248, 96 Stat. 568).

This document also eliminates obsolete regulations relating to the floor stocks tax on cigarettes held for sale on January 1, 1983, and changes the title of the regional regulatory administrator in the table of sections to Part 296 to reflect the new designation of the position.

EFFECTIVE DATE: August 27, 1986.

FOR FURTHER INFORMATION CONTACT: Clifford A. Mullen Coordinator, Bureau of Alcohol, Tobacco and Firearms, Ariel Rios Federal Building, 1200 Pennsylvania Avenue, NW, Washington, DC 20226; telephone (202) 566-7531.

SUPPLEMENTARY INFORMATION: Pub. L. 99-272, entitled The Consolidated Omnibus Budget Reconciliation Act of 1985, was enacted on April 7, 1986. Section 13201 of this act makes permanent the temporary cigarette tax increase imposed by subsection (c) of section 283 of the Tax Equity and Fiscal Responsibility Act of 1982, Pub. L. 97-248.

The regulations in Subpart H of Part 296 relating to the floor stocks tax imposed by subsection (b) of section 283 of Pub. L. 97-248 on cigarettes held for sale on January 1, 1983, are now obsolete and are deleted.

Administrative Procedure Act

Because the existing tax rates do not expire but are made permanent and therefore remain unchanged, it is hereby found to be impracticable and unnecessary to issue this Treasury decision with notice and public procedure thereon under 5 U.S.C. 553(b), or subject to the effective date limitation of 5 U.S.C. 553(d).

* * * * *

Drafting Information

The principal drafter of this document is Clifford A. Mullen of the Distilled Spirits and Tobacco Branch, Bureau of Alcohol, Tobacco and Firearms.

List of Subjects

27 CFR Part 270

Administrative practice and procedure, Authority delegations, Cigars and cigarettes, Claims, Electronic fund transfers, Excise taxes, Labeling, Packaging and containers, Penalties, Reporting and recordkeeping requirements, Seizures and forfeitures, Surety bonds, U.S. possessions, Warehouses.

27 CFR Part 275

Administrative practice and procedure, Authority delegations, Cigarette papers and tubes, Cigars and cigarettes, Claims, Customs duties and inspection, Electronic funds transfers, Excise taxes, Imports, Labeling, Packaging and containers, Penalties, Reporting and recordkeeping requirements, Seizures and forfeitures, Surety bonds, U.S. possessions, Warehouses.

27 CFR Part 296

Authority delegations, Cigarette papers and tubes, Cigars and cigarettes, Claims, Disaster assistance, Excise taxes, Penalties, Seizures and forfeitures, Surety bonds.

Authority and Issuance

PART 270—MANUFACTURE OF CIGARS AND CIGARETTES

Paragraph A. The authority citation for Part 270 is revised to read as follows:

Authority: 5 U.S.C. 552(a); 26 U.S.C. 5701, 5703-5705, 5711-5713, 5721-5723, 5741, 5751, 5753, 5761-5763, 6109, 6301, 6302, 6311, 6313, 6402, 6404, 6423, 6676, 7212, 7325, 7342, 7502, 7503, 7606, 7805; 27 U.S.C. 205; 31 U.S.C. 9301, 9303, 9304, 9306.

Par. B. Section 270.23(b) is revised to reflect permanent tax rates prescribed by Pub. L. 99-272 and the introductory text is republished to read as follows:

§ 270.23 Cigarette tax rates.

On cigarettes, manufactured in or imported into the United States, the following taxes are imposed by law:

* * * * *

(b) *Cigarettes removed on or after January 1, 1983*—(1) *Small cigarettes.* $8 per thousand.

(2) *Large cigarettes.* $16.80 per thousand; except that where such cigarettes are more than 6½ inches in length, the rate of tax is $8 per thousand, counting each 2¾ inches, or fraction thereof, of the length of each as one cigarette.

(Sec. 13201, Pub. L. 99-272, 100 Stat. 311, as amended (26 U.S.C. 5701))

PART 275—IMPORTATION OF CIGARS, CIGARETTES AND CIGARETTE PAPERS AND TUBES

Par. C. The authority citation for Part 275 is revised to read as follows:

Authority: 5 U.S.C. 552(a); 26 U.S.C. 5701, 5703-5705, 5708, 5722, 5723, 5741, 5761-5763, 6301, 6302, 6313, 6404, 7101, 7212, 7342, 7606, 7652, 7652(a), 7805; 31 U.S.C. 9301, 9303, 9304, 9306; 44 U.S.C. 3504(h).

Par. D. Section 275.32(b) is revised to reflect the permanent tax rates prescribed by Pub. L. 99-272 and the introductory text is republished to read as follows:

§ 275.32 Cigarettes.

On cigarettes imported or brought into the United States, the following internal revenue taxes are imposed by law:

* * * * *

(b) *Cigarettes removed on or after January 1, 1983*—(1) *Small cigarettes.* $8 per thousand.

(2) *Large cigarettes.* $16.80 per thousand; except that where such cigarettes are more than 6½ inches in length, the rate of tax is $8 per thousand, counting each 2¾ inches, or fraction thereof, of the length of each as one cigarette.

PART 296—MISCELLANEOUS REGULATIONS RELATING TO CIGARS, CIGARETTES, AND CIGARETTE PAPERS AND TUBES

Par. E. The authority citation for Part 296 is revised to read as follows:

Authority: 31 U.S.C. 9304, 9306; 18 U.S.C. 2341-2346; 26 U.S.C. 5708, 5751, 5761-5763, 6001, 6601, 6621, 6622, 7212, 7342, 7602, 7606, 7608, 7805; 44 U.S.C. 3504(h); 49 U.S.C. 782.

Par. F. The Table of Contents of Part 296 is amended by changing the title of the regional regulatory administrator in § 296.78 to reflect the new designation of the position and by removing Subpart H to read as follows:

PART 296—MISCELLANEOUS REGULATIONS RELATING TO CIGARS, CIGARETTES, AND CIGARETTE PAPERS AND TUBES

* * * * *

Sec.

§ 296.78 Action by regional director (compliance).

* * * * *

§ 296.171-296.179 (Subpart H) [Removed]

Par. G. Subpart H of Part 296 is removed.

Signed: June 23, 1986.

W.T. Drake,
Acting Director.

Approved: July 2, 1986.

Francis A. Keating, II,
Assistant Secretary (Enforcement).

(Filed by the Office of the Federal Register on August 26, 1986, 8:45 am and published in the Federal Register for August 27, 1986, 51 F.R. 30484)

II

Bureau Rulings

Subpart A — ALCOHOL

27 CFR 19.11 MEANING OF TERMS (Liquor Bottle) (Also 194.11, 250.11, 251.11)

Polypropylene cup containers are approved for use in bottling distilled spirits products when the containers meet Food and Drug Administration requirements and the containers are in compliance with the Federal Alcohol Administration Act and 27 CFR Part 19.

ATF Rul. 86-1

The Bureau of Alcohol, Tobacco and Firearms has received inquiries regarding the suitability of containers made of polypropylene material as liquor bottles.

Section 5301(a) of Title 26, United States Code, authorizes the Secretary of the Treasury to regulate the kind of containers designed or intended for use in the sale of distilled spirits. Sections 19.11, 194.11, 250.11, and 251.11 of Title 27, Code of Federal Regulations, state the definition of a liquor bottle as:

> "A bottle made of glass or earthenware, or of other suitable material approved by the Food and Drug Administration, which has been designed or is intended for use as a container for distilled spirits for sale for beverage purposes and which has been determined by the Director to adequately protect the revenue."

The container in question consists of three component materials, and is designed in such a manner that the only component that comes in contact with distilled spirits is an outer lining made of polypropylene. Hydrogen peroxide may be used to sterilize the lining. Food and Drug Administration regulations provide for the use of polypropylene as a component of articles intended for use in contact with food, including alcoholic beverages, in 21 CFR § 177.1520. Hydrogen peroxide is approved as a sterilizing agent for polypropylene food contact surfaces, including those for alcoholic beverages, under 21 CFR § 178.1005. The other two components, a core made of ethylene-vinyl acetate-vinyl alcohol (EVAL) encased entirely within a layer of polypropylene-maleic anhydride adduct are authorized for use in food containers by 21 CFR §§ 77.1360(a) and 175.300(b), respectively. Neither material comes in contact with alcoholic beverages within the container.

Test results indicate that a slight proof loss within the tolerances provided by 27 CFR § 5.37 may occur. Such a proof loss has no negative impact on the revenue. Therefore, it is determined that the use of these polypropylene-lined containers as liquor bottles affords adequate protection to the excise tax revenue.

Since the containers made of polypropylene are not considered standard liquor bottles, the Bureau is requiring that anyone using the containers apply for approval of the containers as distinctive liquor bottles under 27 CFR Part 19 (if such containers are manufactured in a shape other than that of a standard liquor bottle). The containers will also be required to be manufactured in approved standards of fill.

Held, containers made of polypropylene and other materials may be used as containers for distilled spirits provided:

(1) The polypropylene containers are in compliance with Food and Drug Administration regulations;

(2) Approval has been received for the containers as a distinctive liquor bottle (if such containers are manufactured in a shape other than that of a standard liquor bottle); and

(3) The containers are manufactured in an approved standard of fill.

IV

Legislation

Subpart A — Currently Enacted Legislation

Public Law 99-308 *

S. 49

99th Congress

Approved: May 19, 1986

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE AND CONGRESSIONAL FINDINGS.

(a) SHORT TITLE—This Act may be cited as the "Firearms Owners' Protection Act".

(b) CONGRESSIONAL FINDINGS.—The Congress finds that—

(1) the rights of citizens—

(A) to keep and bear arms under the second amendment to the United States Constitution;

(B) to security against illegal and unreasonable searches and seizures under the fourth amendment;

(C) against uncompensated taking of property, double jeopardy, and assurance of due process of law under the fifth amendment; and

(D) against unconstitutional exercise of authority under the ninth and tenth amendments;

require additional legislation to correct existing firearms statutes and enforcement policies; and

(2) additional legislation is required to reaffirm the intent of the Congress, as expressed in section 101 of the Gun Control Act of 1968, that "it is not the purpose of this title to place any undue or unnecessary Federal restrictions or burdens on law-abiding citizens with respect to the acquisition, possession, or use of firearms appropriate to the purpose of hunting, trap-shooting, target shooting, personal protection, or any other lawful activity, and that this title is not intended to discourage or eliminate the private ownership or use of firearms by law-abiding citizens for lawful purposes".

SEC. 101. AMENDMENTS TO SECTION 921.

Section 921 of title 18, United States Code, is amended—

(1) in subsection (a)(10), by striking out "manufacture of" and inserting in lieu thereof "business of manufacturing";

(2) in subsection (a)(11)(A), by striking out "or ammunition";

(3) in subsection (a)(12), by striking out "or ammunition";

(4) in subsection (a)(13), by striking out "or ammunition";

(5) by amending paragraph (20)

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* House Report Number 99-495, page 111 and Senate Report Number 98-583, page 77. See also Pub. L. 99-360, page 75.

of subsection (a) to read as follows:

"(20) The term 'crime punishable by imprisonment for a term exceeding one year' does not include—

"(A) any Federal or State offenses pertaining to antitrust violations, unfair trade practices, restraints of trade, or other similar offenses relating to the regulation of business practices, or

"(B) any State offense classified by the laws of the State as a misdemeanor and punishable by a term of imprisonment of two years or less.

What constitutes a conviction of such a crime shall be determined in accordance with the law of the jurisdiction in which the proceedings were held. Any conviction which has been expunged, or set aside or for which a person has been pardoned or has had civil rights restored shall not be considered a conviction for purposes of this chapter, unless such pardon, expungement, or restoration of civil rights expressly provides that the person may not ship, transport, possess, or receive firearms."; and

(6) in subsection (a), by inserting after paragraph (20) the following new paragraphs:

"(21) The term 'engaged in the business' means—

"(A) as applied to a manufacturer of firearms, a person who devotes time, attention, and labor to manufacturing firearms as a regular course of trade or business with the principal objective of livelihood and profit through the sale or distribution of the firearms manufactured;

"(B) as applied to a manufacturer of ammunition, a person who devotes time, attention, and labor to manufacturing ammunition as a regular course of trade or business with the principal objective of livelihood and profit through the sale or distribution of the ammunition manufactured;

"(C) as applied to a dealer in firearms, as defined in section 921(a)(11)(A), a person who devotes time, attention, and labor to dealing in firearms as a regular course of trade or business with the principal objective of livelihood and profit through the repetitive purchase and resale of firearms, but such term shall not include a person who makes occasional sales, exchanges, or purchases of firearms for the enhancement of a personal collection or for a hobby, or who sells all or part of his personal collection of firearms;

"(D) as applied to a dealer in firearms, as defined in section 921(a)(11)(B), a person who devotes time, attention, and labor to engaging in such activity as a regular course of trade or business with the principal objective of livelihood and profit, but such term shall not include a person who makes occasional repairs of firearms, or who occasionally fits special barrels, stocks, or trigger mechanisms to firearms;

"(E) as applied to an importer of firearms, a person who devotes time, attention, and labor to importing firearms as a regular course of trade or business with the principal objective of livelihood and profit through the sale or distribution of the firearms imported; and

"(F) as applied to an importer of ammunition, a person who devotes time, attention, and labor to importing ammunition as a regular course of trade or business with the principal objective of livelihood and profit through the sale or distribution of the ammunition imported.

"(22) The term 'with the principal objective of livelihood and profit' means that the intent underlying the sale or disposition of firearms is predominantly one of obtaining livelihood and pecuniary gain, as opposed to other intents, such as improving or liquidating a personal firearms collection.

"(23) The term 'machinegun' has the meaning given such term in section 5845(b) of the National Firearms Act (26 U.S.C. 5845(b)).

"(24) The terms 'firearm silencer' and 'firearm muffler' mean any device for silencing, muffling, or diminishing the report of a portable firearm, including any combination of parts, designed or redesigned, and intended for use in assembling or fabricating a firearm silencer or firearm muffler, and any part intended only for use in such assembly or fabrication.".

SEC. 102. AMENDMENTS TO SECTION 922.

Section 922 of title 18, United States Code, is amended—

(1) so that paragraph (1) of subsection (a) reads as follows:

"(1) for any person—

"(A) except a licensed importer, licensed manufacturer, or licensed dealer, to engage in the business of importing, manufacturing, or dealing in firearms, or in the course of such business to ship, transport, or receive any firearm in interstate or foreign commerce; or

"(B) except a licensed importer or licensed manufacturer, to engage in the business of importing or manufacturing ammunition, or in the course of such business, to ship, transport, or receive any ammunition in interstate or foreign commerce;";

(2) in subsection (a)(2)—

(A) by striking out "or ammunition"; and

(B) by striking out "or licensed dealer for the sole purpose of repair or customizing;" and inserting in lieu thereof "licensed dealer, or licensed collector;";

(3) in subsection (a)(3), by striking out "(B)" and all that follows through "(b)(3) of this section," and inserting in lieu thereof the following: "(B) shall not apply to the transportation or receipt of a firearm obtained in conformity with subsection (b)(3) of this section,";

(4) in subsection (b)—

(A) in paragraph (2), by striking out "or ammunition" each place it appears;

(B) in paragraph (3), by striking out "(A)" and all that follows through "intrastate transactions other than at the licensee's business premises," and inserting in lieu thereof "(A) shall not apply to the sale or delivery of any rifle or shotgun to a resident of a State other than a State in which the licensee's place of business is located if the transferee meets in person with the transferor to accomplish the transfer, and the sale, delivery, and receipt fully comply with the legal conditions of sale in both such States (and any licensed manufacturer, importer or dealer shall be presumed, for purposes of this subparagraph, in the absence of evidence to the contrary, to have had actual knowledge of the State laws and published ordinances of both States),";

(C) in paragraph (3), by inserting "and" before "(B)";

(D) in paragraph (3), by striking out ", and (C)" and all that follows through the end of such paragraph and inserting in lieu thereof a semicolon; and

(E) in paragraph (5), by striking out "or ammunition except .22 caliber rimfire ammunition" and inserting "or armor-piercing ammunition" in lieu thereof;

(5) in subsection (d)—

(A) by striking out "licensed importer, licensed manufacturer, licensed dealer, or licensed collector" the first place it appears and inserting in lieu thereof "person";

(B) by amending paragraph (3) to read as follows:

"(3) is an unlawful user of or addicted to any controlled substance (as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802));";

(C) in paragraph (4), by striking out the period and inserting in lieu thereof a semicolon; and

(D) by inserting after paragraph (4) the following:

"(5) who, being an alien, is illegally or unlawfully in the United States;

"(6) who has been discharged from the Armed Forces under dishonorable conditions; or

"(7) who, having been a citizen of the United States, has renounced his citizenship.";

(6) in subsection (g)—

(A) in paragraph (1), by striking out "is under indictment for, or who";

(B) by amending paragraph (3) to read as follows:

"(3) is an unlawful user of or addicted to any controlled substance (as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802));";

(C) by inserting after paragraph (4) the following new paragraphs:

"(5) who, being an alien, is illegally or unlawfully in the United States;

"(6) who has been discharged from the Armed Forces under dishonorable conditions; or

"(7) who, having been a citizen of the United States, has renounced his citizenship;"; and

(D) by striking out "to ship or transport any firearm or ammunition in interstate or foreign commerce." and inserting in lieu thereof "to ship or transport in interstate or foreign commerce, or possess in or affecting commerce, any firearm or ammunition; or to receive any firearm or ammunition which has been shipped or transported in interstate or foreign commerce.";

(7) so that subsection (h) reads as follows:

"(h) It shall be unlawful for any individual, who to that individual's knowledge and while being employed for any person described in any paragraph of subsection (g) of this section, in the course of such employment—

"(1) to receive, possess, or transport any firearm or ammunition in or affecting interstate or foreign commerce; or

"(2) to receive any firearm or ammunition which has been shipped or transported in interstate or foreign commerce.";

(8) by inserting after subsection (m) the following:

"(n) It shall be unlawful for any person who is under indictment for a crime punishable by imprisonment for a term exceeding one year to ship or transport in interstate or foreign commerce any firearm or ammunition or receive any firearm or ammunition which has been shipped or transported in interstate or foreign commerce."; and

(9) by inserting after the subsection added by paragraph (8) of this section the following:

"(o)(1) Except as provided in paragraph (2), it shall be unlawful for any person to transfer or possess a machinegun.

"(2) This subsection does not apply with respect to—

"(A) a transfer to or by, or possession by or under the authority of, the United States or any department or agency thereof or a State, or a department, agency, or political subdivision thereof; or

"(B) any lawful transfer or lawful possession of a machinegun that was lawfully possessed before the date this subsection takes effect.".

SEC. 103. AMENDMENTS TO SECTION 923.

Section 923 of title 18, United States Code, is amended—

(1) in subsection (a)—

(A) by striking out the first sentence and inserting in lieu thereof "No person shall engage in the business of importing, manufacturing, or dealing in firearms, or importing or manufacturing ammunition, until he has filed an application with and received a license to do so from the Secretary."; and

(B) by striking out "and contain such information", and inserting in lieu thereof "and contain only that information necessary to determine eligibility for licensing.";

(2) in subsection (a)(3)(B), by striking out "or ammunition for firearms other than destructive devices,";

(3) in subsection (b), by striking out "and contain such information" and inserting in lieu thereof "and contain only that information necessary to determine eligibility";

(4) in subsection (c), by adding at the end "Nothing in this chapter shall be construed to prohibit a licensed manufacturer, importer, or dealer from maintaining and disposing of a personal collection of firearms, subject only to such restrictions as apply in this chapter to dispositions by a person other than a licensed manufacturer, importer, or dealer. If any firearm is so disposed of by a licensee within one year after its transfer from his business inventory into such licensee's personal collection or if such disposition or any other acquisition is made for the purpose of willfully evading the restrictions placed upon licensees by this chapter, then such firearm shall be deemed part of such licensee's business inventory.";

(5) in subsection (e), by inserting "willfully" before "violated";

(6) in subsection (f)—

(A) in paragraph (3)—

(i) by inserting "de novo" before "judicial"; and

(ii) by inserting "whether or not such evidence was considered at the hearing held under paragraph (2)."after "to the proceeding"; and

(B) by adding at the end the following new paragraph:

"(4) If criminal proceedings are instituted against a licensee alleging any violation of this chapter or of rules or regulations prescribed under this chapter, and the licensee is acquitted of such charges, or such proceedings are terminated, other than upon motion of the Government before trial upon such charges, the Secretary shall be absolutely barred from denying or revoking any license granted under this chapter where such denial or revocation is based in whole or in part on the facts which form the basis of such criminal charges. No proceedings for the revocation of a license shall be instituted by the Secretary more than one year after the filing of the indictment or information.";

(7) so that subsection (g) reads as follows:

"(g)(1)(A) Each licensed importer, licensed manufacturer, and licensed dealer shall maintain such records of importation, production, shipment, receipt, sale, or other disposition of firearms at his place of business for such period, and in such form, as the

Secretary may by regulations prescribe. Such importers, manufacturers, and dealers shall not be required to submit to the Secretary reports and information with respect to such records and the contents thereof, except as expressly required by this section. The Secretary, when he has reasonable cause to believe a violation of this chapter has occurred and that evidence thereof may be found on such premises, may, upon demonstrating such cause before a Federal magistrate and securing from such magistrate a warrant authorizing entry, enter during business hours the premises (including places of storage) of any licensed firearms importer, licensed manufacturer, licensed dealer, licensed collector, or any licensed importer or manufacturer of ammunition, for the purpose of inspecting or examining—

"(i) any records or documents required to be kept by such licensed importer, licensed manufacturer, licensed dealer, or licensed collector under this chapter or rules or regulations under this chapter, and

"(ii) any firearms or ammunition kept or stored by such licensed importer, licensed manufacturer, licensed dealer, or licensed collector, at such premises.

"(B) The Secretary may inspect or examine the inventory and records of a licensed importer, licensed manufacturer, or licensed dealer without such reasonable cause or warrant—

"(i) in the course of a reasonable inquiry during the course of a criminal investigation of a person or persons other than the licensee;

"(ii) for ensuring compliance with the record keeping requirements of this chapter not more than once during any twelve-month period; or

"(iii) when such inspection or examination may be required for determining the disposition of one or more particular firearms in the course of a bona fide criminal investigation.

"(C) The Secretary may inspect the inventory and records of a licensed collector without such reasonable cause or warrant—

"(i) for ensuring compliance with the record keeping requirements of this chapter not more than once during any twelve-month period; or

"(ii) when such inspection or examination may be required for determining the disposition of one or more particular firearms in the course of a bona fide criminal investigation.

"(D) At the election of a licensed collector, the annual inspection of records and inventory permitted under this paragraph shall be performed at the office of the Secretary designated for such inspections which is located in closest proximity to the premises where the inventory and records of such licensed collector are maintained. The inspection and examination authorized by this paragraph shall not be construed as authorizing the Secretary to seize any records or other documents other than those records or documents constituting material evidence of a violation of law. If the Secretary seizes such records or documents, copies shall be provided the licensee within a reasonable time. The Secretary may make available to any Federal, State, or local law enforcement agency any information which he may obtain by reason of this chapter with respect to the identification of persons prohibited from purchasing or receiving firearms or ammunition who have purchased or received firearms or ammunition, together with a description of such firearms or ammunition, and he may provide information to the extent such information may be contained in the records required to be maintained by this chapter, when so requested by any

Federal, State, or local law enforcement agency.

"(2) Each licensed collector shall maintain in a bound volume the nature of which the Secretary may by regulations prescribe, records of the receipt, sale, or other disposition of firearms. Such records shall include the name and address of any person to whom the collector sells or otherwise disposes of a firearm. Such collector shall not be required to submit to the Secretary reports and information with respect to such records and the contents thereof, except as expressly required by this section.

"(3) Each licensee shall prepare a report of multiple sales or other dispositions whenever the licensee sells or otherwise disposes of, at one time or during any five consecutive business days, two or more pistols, or revolvers, or any combination of pistols and revolvers totalling two or more, to an unlicensed person. The report shall be prepared on a form specified by the Secretary and forwarded to the office specified thereon not later than the close of business on the day that the multiple sale or other disposition occurs.

"(4) Where a firearms or ammunition business is discontinued and succeeded by a new licensee, the records required to be kept by this chapter shall appropriately reflect such facts and shall be delivered to the successor. Where discontinuance of the business is absolute, such records shall be delivered within thirty days after the business discontinuance to the Secretary. However, where State law or local ordinance requires the delivery of records to other responsible authority, the Secretary may arrange for the delivery of such records to such other responsible authority.

"(5)(A) Each licensee shall, when required by letter issued by the Secretary, and until notified to the contrary in writing by the Secretary, submit on a form specified by the Secretary, for periods and at the times specified in such letter, all record information required to be kept by this chapter or such lesser record information as the Secretary in such letter may specify.

"(B) The Secretary may authorize such record information to be submitted in a manner other than that prescribed in subparagraph (A) of this paragraph when it is shown by a licensee that an alternate method of reporting is reasonably necessary and will not unduly hinder the effective administration of this chapter. A licensee may use an alternate method of reporting if the licensee describes the proposed alternate method of reporting and the need therefor in a letter application submitted to the Secretary, and the Secretary approves such alternate method of reporting."; and

(8) so that subsection (j) reads as follows:

"(j) A licensed importer, licensed manufacturer, or licensed dealer may, under rules or regulations prescribed by the Secretary, conduct business temporarily at a location other than the location specified on the license if such temporary location is the location for a gun show or event sponsored by any national, State, or local organization, or any affiliate of any such organization devoted to the collection, competitive use, or other sporting use of firearms in the community, and such location is in the State which is specified on the license. Records of receipt and disposition of firearms transactions conducted at such temporary location shall include the location of the sale or other disposition and shall be entered in the permanent records of the licensee and retained on the location specified on the license. Nothing in this subsection shall authorize any licensee to conduct business in or from any motorized or towed vehicle. Notwithstanding the provisions of subsection (a) of this section, a separate fee shall not be required of a licensee with respect to business conducted under this subsection. Any inspection or examination of inventory or records under this chapter by the Secretary at such temporary location shall be limited to inventory consisting of, or records relating to, firearms held or disposed at such temporary location. Nothing in this subsection shall be construed to authorize the Secretary to inspect or examine the inventory or records of a licensed importer, licensed manufacturer, or licensed dealer at any location other than the location specified on the license. Nothing in this subsection shall be construed to diminish in any manner any right to display, sell, or otherwise dispose of firearms or ammunition, which is in effect before the date of the enactment of the Firearms Owners' Protection Act."

SEC. 104. AMENDMENTS TO SECTION 924.

(a) In General.—Section 924 of title 18, United States Code, is amended—

(1) so that subsection (a) reads as follows:

"(a)(1) Except as otherwise provided in paragraph (2) of this subsection, subsection (b) or (c) of this section, or in section 929, whoever—

"(A) knowingly makes any false statement or representation with respect to the information required by this chapter to be kept in the records of a person licensed under this chapter or in applying for any license or exemption or relief from disability under the provisions of this chapter;

"(B) knowingly violates subsection (a)(4), (a)(6), (f), (g), (i), (j), or (k) of section 922;

"(C) knowingly imports or brings into the United States or any possession thereof any firearm or ammunition in violation of section 922(l); or

"(D) willfully violates any other provision of this chapter, shall be fined not more than $5,000, imprisoned not more than five years, or both, and shall become eligible for parole as the Parole Commission shall determine.

"(2) Any licensed dealer, licensed importer, licensed manufacturer, or licensed collector who knowingly—

"(A) makes any false statement or representation with respect to the information required by the provisions of this chapter to be kept in the records of a person licensed under this chapter, or

"(B) violates subsection (m) of section 922, shall be fined not more than $1,000, imprisoned not more than one year, or both, and shall become eligible for parole as the Parole Commission shall determine.";

(2) in subsection (c)—

(A) by inserting "(1)" before "Whoever,";

(B) by striking out "violence" each place it appears and inserting in lieu thereof "violence or drug trafficking crime,";

(C) by inserting "or drug trafficking crime" before "in which the firearm was used or carried.";

(D) in the first sentence, by striking out the period at the end and inserting in lieu thereof ", and if the firearm is a machinegun, silencer or firearm muffler, to imprisonment for ten years.";

(E) in the second sentence, by striking out the period at the end and inserting in lieu thereof ", and if the firearm is a machinegun, or is equipped with a firearm silencer or firearm muffler, to imprisonment for twenty years."; and

(F) by adding at the end the following:

"(2) For purposes of this subsection, the term 'drug trafficking crime' means any felony violation of Federal law involving the distribution, manufacture, or importation of any controlled substance (as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802)).

"(3) For purposes of this subsection the term 'crime of violence' means an offense that is a felony and—

"(A) has as an element the use, attempted use, or threatened use of physical force against the person or property of another, or

"(B) that by its nature, involves a substantial risk that physical force against the person or property of another may be used in the course of committing the offense.";

(3) by amending subsection (d) to read as follows:

"(d)(1) Any firearm or ammunition involved in or used in any knowing violation of subsection (a)(4), (a)(6), (f), (g), (h), (i), (j), or (k) of section 922, or knowing importation or bringing into the United States or any possession thereof any firearm or ammunition in violation of section 922(l), or knowing violation of section 924, or willful violation of any other provision of this chapter or any rule or regulation promulgated thereunder, or any violation of any other criminal law of the United States, or any firearm or ammunition intended to be used in any offense referred to in paragraph (3) of this subsection, where such intent is demonstrated by clear and convincing evidence, shall be subject to seizure and forfeiture, and all provisions of the Internal Revenue Code of 1954 relating to the seizure, forfeiture, and disposition of firearms, as defined in section 5845(a) of that Code, shall, so far as applicable, extend to seizures and forfeitures under the provisions of this chapter: *Provided*, That upon acquittal of the owner or possessor, or dismissal of the charges against him other than upon motion of the Government prior to trial, the seized firearms or ammunition shall be returned forthwith to the owner or possessor or to a person delegated by the owner or possessor unless the return of the firearms or ammunition would place the owner or possessor or his delegate in violation of law. Any action or proceeding for the forfeiture of firearms or ammunition shall be commenced within one hundred and twenty days of such seizure.

"(2)(A) In any action or proceeding for the return of firearms or ammunition seized under the provisions of this chapter, the court shall allow the prevailing party, other than the United States, a reasonable attorney's fee, and the United States shall be liable therefor.

"(B) In any other action or proceeding under the provisions of this chapter, the court, when it finds that such action was without foundation, or was initiated vexatiously, frivolously, or in bad faith, shall allow the prevailing party, other than the United States, a reasonable attorney's fee, and the United States shall be liable therefor.

"(C) Only those firearms or quantities of ammunition particularly named and individually identified as involved in or used in any violation of the provisions of this chapter or any rule or regulation issued thereunder, or any other criminal law of the United States or as intended to be used in any offense referred to in paragraph (3) of this subsection, where such intent is demonstrated by clear and convincing evidence, shall be subject to seizure, forfeiture, and disposition.

"(D) The United States shall be liable for attorneys' fees under this paragraph only to the extent provided in advance by appropriation Acts.

"(3) The offenses referred to in paragraphs (1) and (2)(C) of this subsection are—

"(A) any crime of violence, as that term is defined in section 924(c)(3) of this title;

"(B) any offense punishable under the Controlled Substances Act (21 U.S.C. 801 et seq.) or the Controlled Substances Import and Export Act (21 U.S.C. 951 et seq.);

"(C) any offense described in section 922(a)(1), 922(a)(3), 922(a)(5), or 922(b)(3) of this title, where the firearm or ammunition intended to be used in any such offense is involved in a pattern of activities which includes a violation of any offense described in section 922(a)(1), 922(a)(3), 922(a)(5), 922(b)(3) of this title;

"(D) any offense described in section 922(d) of this title where the firearm or ammunition is intended to be used in such offense by the transferor of such firearm or ammunition;

"(E) any offense described in section 922(i), 922(j), 922(l), 922(n), or 924(b) of this title; and

"(F) any offense which may be prosecuted in a court of the United States which involves the exportation of firearms or ammunition."; and

(4) by adding at the end the following new subsection:

"(e)(1) In the case of a person who violates section 922(g) of this title and has three previous convictions by any court referred to in section 922(g)(1) of this title for robbery or burglary, or both, such person shall be fined not more than $25,000 and imprisoned not less than fifteen years, and, notwithstanding any other provision of law, the court shall not suspend the sentence of, or grant a probationary sentence to, such person with respect to the conviction under section 922(g), and such person shall not be eligible for parole with respect to the sentence imposed under this subsection.

"(2) As used in this subsection—

"(A) the term 'robbery' means any crime punishable by a term of imprisonment exceeding one year and consisting of the taking of the property of another from the person or presence of another by force or violence, or by threatening or placing another person in fear that any person will imminently be subjected to bodily harm; and

"(B) the term 'burglary' means any crime punishable by a term of imprisonment exceeding one year and consisting of entering or remaining surreptitiously within a building that is the property of another with intent to engage in conduct constituting a Federal or State offense.".

(b) CONFORMING REPEAL.—Title VII of the Omnibus Crime Control and Safe Streets Act of 1968 (18 U.S.C. App. 1201 et seq.) is repealed.

SEC. 105. AMENDMENTS TO SECTION 925.

Section 925 of title 18, United States Code, is amended—

(1) in subsection (c)—

(A) by striking out "has been convicted of a crime punishable by imprisonment for a term exceeding one year (other than a crime involving the use of a firearm or other weapon or a violation of this chapter or of the National Firearms Act)" and inserting in lieu thereof "is prohibited from possessing, shipping, transporting, or receiving firearms or ammunition";

(B) by inserting "transportation," after "shipment,";

(C) by striking out "and incurred by reason of such conviction"; and

(D) by inserting "Any person whose application for relief from disabilities is denied by the Secretary may file a petition with the United States district court for the district in which he resides for a judicial review of such denial. The court may in its discretion admit additional evidence where failure to do so would result in a miscarriage of justice." after "the public interest."; and

(2) in subsection (d)—

(A) by striking out "may authorize" and inserting in lieu thereof "shall authorize";

(B) by striking out "the person importing or bringing in the firearm or ammunition establishes to the satisfaction of the Secretary that";

(C) in paragraph (3), by inserting before the semicolon ", except in any case where the Secretary has not authorized the importation of the firearm pursuant to this paragraph, it shall be unlawful to import any frame, receiver, or barrel of such firearm which would be prohibited if assembled"; and

(D) by striking out "may permit" and inserting in lieu thereof "shall permit".

SEC. 106. AMENDMENTS TO SECTION 926.

Section 926 of title 18 of the United States Code is amended—

(1) by inserting "(a)" before "The Secretary" the first place it occurs;

(2) by inserting "only" after "prescribe";

(3) by striking out "as he deems reasonably" and inserting in lieu thereof "as are";

(4) by striking out the last sentence and inserting in lieu thereof "No such rule or regulation prescribed after the date of the enactment of the Firearms Owners' Protection Act may require that records required to be maintained under this chapter or any portion of the contents of such records, be recorded at or transferred to a facility owned, managed, or controlled by the United States or any State or any political subdivision thereof, nor that any system of registration of firearms, firearms owners, or firearms transactions or dispositions be established. Nothing in this section expands or restricts the Secretary's authority to inquire into the disposition of any firearm in the course of a criminal investigation."; and

(5) by adding at the end the following:

"(b) The Secretary shall give not less than ninety days public notice, and shall afford interested parties opportunity for hearing, before prescribing such rules and regulations.

"(c) The Secretary shall not prescribe rules or regulations that require purchasers of black powder under the exemption provided in section 845(a)(5) of this title to complete affidavits or forms attesting to that exemption.".

SEC. 107. TRANSPORTATION OF FIREARMS.

(a) In General.—Chapter 44 of title 18, United States Code, is amended by inserting between section 926 and section 927 the following new section:

"§ 926A. Interstate transportation of firearms

"Any person not prohibited by this chapter from transporting, shipping, or receiving a firearm shall be entitled to transport an unloaded, not readily accessible firearm in interstate commerce notwithstanding any provision of any legislation enacted, or any rule or regulation prescribed by any State or political subdivision thereof.".

(b) Clerical Amendment.—The table of sections for chapter 44 of title 18, United States Code, is amended by inserting between the item relating to section 926 and the item relating to section 927 the following new item:

"926A. Interstate transportation of firearms.".

SEC. 108. AMENDMENTS TO SECTION 929.

Section 929(a) of title 18, United States Code, is amended—

(1) by inserting "(1)" before "Whoever,";

(2) by striking out "violence" each place it appears and inserting in lieu thereof "violence or drug trafficking crime,"; and

(3) by adding at the end the following:

"(2) For purposes of this subsection, the term 'drug trafficking crime' means any felony violation of Federal law involving the distribution, manufacture, or importation of any controlled substance (as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802)).".

SEC. 109. AMENDMENT OF NATIONAL FIREARMS ACT.

(a) Section 5845(b) of the National Firearms Act (26 U.S.C. 5845(b)) is amended by striking out "any combination of parts designed and intended for use in converting a weapon into a machinegun," and inserting in lieu thereof "any part designed and intended solely and exclusively, or combination of parts designed and intended, for use in converting a weapon into a machinegun,".

(b) Conforming Amendment.—Section 5845(a)(7) of the National Firearms Act (26 U.S.C. 5845(a)(7)) is amended to read "(7) any silencer (as defined in section 921 of title 18, United States Code);".

SEC. 110. EFFECTIVE DATE.

(a) In General.—The amendments made by this Act shall become effective one hundred and eighty days after the date of the enactment of this Act. Upon their becoming effective, the Secretary shall publish and provide to all licensees a compilation of the State laws and published ordinances of which licensees are presumed to have knowledge pursuant to chapter 44 of title 18, United States Code, as amended by this Act. All amendments to such State laws and published ordinances as contained in the aforementioned compilation shall be published in the Federal Register, revised annually, and furnished to each person licensed under chapter 44 of title 18, United States Code, as amended by this Act.

(b) Pending Actions, Petitions, and Appellate Proceedings.—The amendments made by sections 103(6)(B), 105, and 107 of this Act shall be applicable to any action, petition, or appellate proceeding pending on the date of the enactment of this Act.

(c) Machinegun Prohibition.—Section 102(9) shall take effect on the date of the enactment of this Act.

Public Law 99-360*

S. 2414

99th Congress

Approved: July 8, 1986

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

Section 1. (a) Strike out section 926A of title 18, United States Code, and insert in lieu thereof the following new section:

"§ 926A. Interstate transportation of firearms

"Notwithstanding any other provision of any law or any rule or regulation of a State or any political subdivision thereof, any person who is not otherwise prohibited by this chapter from transporting, shipping, or receiving a firearm shall be entitled to transport a firearm for any lawful purpose from any place where he may lawfully possess and carry such firearm to any other place where he may lawfully possess and carry such firearm if, during such transportation the firearm is unloaded, and neither the firearm nor any ammunition being transported is readily accessible or is directly accessible from the passenger compartment of such transporting vehicle: *Provided,* That in the case of a vehicle without a compartment separate from the driver's compartment the firearm or ammunition shall be contained in a locked container other than the glove compartment or console.".

(b) Section 921(a)(22) of title 18, United States Code, is amended by inserting before the period at the end thereof the following: ": *Provided,* That proof of profit shall not be required as to a person who engages in the regular and repetitive purchase and disposition of firearms for criminal purposes or terrorism. For purposes of this paragraph, the term 'terrorism' means activity, directed against United States persons, which—

"(A) is committed by an individual who is not a national or permanent resident alien of the United States;

"(B) involves violent acts or acts dangerous to human life which would be a criminal violation if committed within the jurisdiction of the United States; and

"(C) is intended—

"(i) to intimidate or coerce a civilian population;

"(ii) to influence the policy of a government by intimidation or coercion; or

"(iii) to affect the conduct of a government by assassination or kidnapping".

(c) Section 923(c) of title 18, United States Code, is amended by adding before the period at the end thereof the following; ", except that any licensed manufacturer, importer, or dealer who has maintained a firearm as part of a personal collection for one year and who sells or otherwise disposes of such firearm shall record the description of the firearm in a bound volume, containing the name and place of residence and date of birth of the transferee if the transferee is an individual, or the identity and principal and local places of business of the transferee if the transferee is a corporation or other business entity: *Provided,* That no other recordkeeping shall be required".

Sec. 2. This Act and the amendments made by this Act, intended to amend the Firearms Owners' Protection Act, shall become effective on the date on which the section they are intended to amend in such Firearms Owners' Protection Act becomes effective and shall apply to the amendments to title 18, United States Code, made by such Act.

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* No Committee Repots. See 132 Cong. Rec. S 5347-50, 5364-68 (daily ed. May 6, 1986) and 132 Cong. Rec. H 4102-04 (daily ed. June 24, 1986). See also Pub. L 99-308, page 63.

Subpart B — Committee Reports

Senate Report*

No. 98-583

98th Congress

FEDERAL FIREARMS OWNERS PROTECTION ACT

August 8, 1984

Mr. Thurmond, from the Committee on the Judiciary, submitted the following report to accompany S. 914.

The Committee on the Judiciary, to which was referred the bill (S. 914) to protect firearms owners' constitutional rights, civil liberties, and rights to privacy, having considered the same, reports favorably thereon with an amendment in the nature of a substitute and recommends that the bill as amended do pass.

I. Purposes of the Bill

The purpose of S. 914, as reported by the Committee on the Judiciary, is to further numerous constitutional rights guaranteed to firearms owners[1] by correcting substantial deficiencies in the Federal firearms laws,[2] which, in part, have given rise to certain questionable enforcement policies. It accomplishes these goals, while preserving the necessary statutory foundation for legitimate law enforcement efforts.

In particular, S. 914 reaffirms the intent clearly expressed by Congress in 1968 that it is not the purpose of Federal firearms laws to place "any undue or unnecessary Federal restrictions or burdens on law-abiding citizens with respect to the acquisition, possession, or use of firearms appropriate to the purpose of . . . any . . . lawful activity." Rather, it is the purpose of such laws "to provide support to Federal, State, and local law enforcement officials in their fight against crime and violence. . . ."[3]

II. Background

S. 914 was introduced on March 23, 1983, by Senator James A. McClure (R.-Idaho) and was referred to the Committee on the Judiciary. Thirty-eight original cosponsors joined Senator McClure, including the following Members of the Judiciary Committee: Chairman Strom Thurmond (R.-S.C.), Senator Orrin G. Hatch (R.-Utah), Senator Alan K. Simpson (R.-Wyo.), Senator John P. East (R.-N.C.), Senator Charles E. Grassley (R.-Iowa), Senator Jeremiah Denton (R.-Ala.),

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* No Senate Report on S. 49. S. Rept. No. 98-583 (98th Congress) to accompany S. 914 (98th Congress) contains substantially the same provisions as S. 49 (98th Congress). No Conference Report.

[1] Protections are provided, inter alia, by the following amendments to the United States Constitution: amendment II (right to keep and bear arms), amendment IV (unreasonable searches and seizures), amendment V (due process, double jeopardy, uncompensated taking of property), amendment IX (enumeration of certain rights not to be construed to deny others), and amendment X (powers reserved to the States or the people).

[2] 18 U.S.C. 921-928; 18 U.S.C. app. 1201-1203.

[3] Gun Control Act of 1968, Pubic Law 90-618, sec. 101, 82 Stat. 1214 (18 U.S.C. 921n).

Senator Dennis DeConcini (D.-Ariz.), Senator Max Baucus (D.-Mont.) and Senator Howell Heflin (D.-Ala.). When the bill was ordered reported by the Committee, 16 additional cosponsors had been added, including Senator Paul Laxalt (R.-Nev.), Senator Robert C. Byrd (D.-W.Va.), and Senator Robert Dole (R.-Kan.), also Members of the Committee.

S. 914, as introduced, was identical to S. 1030, which was reported by the Senate Judiciary Committee in the 97th Congress,[4] except for the deletion of provisions relating to a Federal "waiting period" for the purchase of certain firearms.[5] The reporting of S. 1030 followed four mark-up sessions,[6] three days of hearings on that particular bill,[7] and other hearings on the subject of deficiencies in Federal firearm laws and questionable enforcement policies.[8] In light of the extensive consideration which legislation akin to S. 914 received in previous Congresses, Chairman Thurmond again held the bill at the full Committee.

On October 4, 1983, the full Committee held a hearing on S. 914[9] at which testimony was heard from the sponsor of the bill, the Reagan Administration, the National Rifle Association of America, the Citizens Committee for the Right to Keep and Bear Arms, Gun Owners of America, and Hangun Control, Inc. Written statements were also received from Congressman Harold L. Volkmer (D.-Mo.), the sponsor of companion legislation in the House of Representatives,[10] the National Council for a Responsible Firearms Policy, Neal Knox, and the Police Executive Research Forum.

As in previous Congresses, the Committee heard considerable testimony at the hearing concerning the pressing need for substantial revisions in the Gun Control Act of 1968 to achieve a more appropriate balance between the constitutional rights of law-abiding gun owners and dealers, on the one hand, and legitimate law enforcement interests, on the other. The Administration witness quoted the President of the United States as follows: "I look forward to signing a bill that truly protects the rights of law-abiding citizens, without diminishing the effectiveness of criminal law enforcement against the misuse of firearms."[11] In that spirit, the Administration, whose representative described S. 914 as "a bill that represents substantial progress toward rationalizing and modernizing our gun laws,"[12] proposed amendments relating to interstate sales, mandatory penalties, gun shows and other provisions. Many of those amendments, with some modifications, were incorporated into an amendment in the nature of a substitute offered by Senator Hatch and adopted by the Committee, which is discussed in more detail infra.

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[4] S. 1030, 97th Cong., 1st sess. (1981); S. Rep. 476, 97th Cong., 2d sess. (1982) (hereinafter cited as S. 1030 report).

[5] S. 1030, sec. 102(e)(4) (amending 18 U.S.C. 922(b)(5)).

[6] S. 1030 was considered by the committee on Mar. 10, 1982, Mar. 17, 1982 Apr. 20, 1982, and Apr. 21, 1982.

[7] The full committee held hearings on Dec. 9, 1981, Dec. 11, 1981, and Feb. 8, 1982. The Firearms Owner Protection Act: Hearings on S. 1030 before the Senate Committee on the Judiciary, 97th Cong., 1st and 2d sess. (1981-1982) (hereinafter cited as S. 1030 hearings).

[8] Gun control and Constitutional Rights: Hearing before the Subcommittee on the Constitution of the Senate Committee on the Judiciary on Constitutional Oversight of a Regulatory Agency—the Bureau of Alcohol, Tobacco and Firearms, Department of the Treasury—on the enforcement of the Gun Control Act of 1968, 96th Cong., 2d sess. (1980); oversight hearings on the Bureau of Alcohol, Tobacco and Firearms, fiscal year 1980, before the Senate Committee on Appropriations, 96th Cong., 1st sess. (1979). These hearings are described in more detail in the S. 1030 report, supra note 4, at 14-17.

[9] The Federal Firearms Owner Protection Act: Hearing before the Senate Committee on the Judiciary on S. 914, 98th Cong., 1st sess. (1983) (hereinafter cited as *S. 914 hearings*).

[10] H.R. 2420, 98th cong., 1st sess.

[11] S. 914 hearings, supra note 9, at 11.

[12] Id.

Most of the public witnesses who testified repeated the urgent need for changes in current law to prevent the recurrence of abuses documented in detail in earlier Committee hearings and in hearings held by other Committees.[13] In particular, witnesses strongly urged the Committee to report reforms relating to an "engaged in the business" definition, private collections of dealers, limitations on warrantless inspections, forfeitures of firearms owned by acquitted persons, and criminal states of mind with respect to offenses.[14]

III. Committee Consideration

The Committee considered S. 914 on November 17, 1983, April 5, 1984, April 12, 1984, and May 10, 1984. On November 17, 1983, Senator Hatch offered an amendment in the nature of a substitute (later modified on April 5, 1984, based on discussions between Senator Hatch, the sponsor of the bill, and the Administration) generally incorporating the Administration's suggestions, other improvements, and some technical changes. The Committee took action on the following amendments to that substitute, which are described in more detail in Part V, infra.

A. WAITING PERIOD

By a vote of 3 to 11, the Committee did not adopt an amendment offered by Senator Kennedy to require a Federal fourteen-day waiting period for the purchase of handguns. The vote was as follows:

YEAS	**NAYS**
Mathias [1]	Laxalt
Kennedy	Hatch
Metzenbaum	Simpson
	East [1]
	Grassley [1]
	Denton
	Specter
	DeConcini [1]
	Baucus
	Heflin
	Thurmond

[1] By proxy.

B. ARMOR-PIERCING BULLETS

By a vote of 14 to 1, the Committee adopted an amendment offered by Senator Kennedy, as modified by an amendment in the nature of a substitute offered by Senator Hatch on behalf of Senator Dole, to impose mandatory minimum penalties for using armor-piercing bullets in the commission of a Federal crime of violence. This provision was adopted in lieu of a total ban on the importation, manufacture and sale of such bullets. The 13 to 3 vote on the Hatch-Dole substitute was as follows:

YEAS	NAYS
Mathias	Biden
Laxalt	Kennedy
Hatch	Metzenbaum [1]
Dole [1]	
Simpson	
East [1]	
Grassley [1]	
Denton [1]	
Specter	
DeConcini [1]	
Baucus	
Heflin	
Thurmond	

[1] By proxy.

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[13] See hearings cited in notes 7 and 8, supra.

[14] See, e.g., S. 914 hearings, supra note 9, at 78-79 (testimony of Warren Cassidy on behalf of the National Rifle Association of America, Inc.).

The vote on the Kennedy amendment, as amended by the Hatch-Dole substitute, was as follows:

YEAS	NAYS
Mathias	Kennedy
Laxalt	
Hatch	
Dole[1]	
Simpson	
East[1]	
Grassely[1]	
Denton[1]	
Specter	
Biden	
DeConcini	
Baucus	
Heflin	
Thurmond	

[1] By proxy.

C. INTERSTATE SALES

By a voice vote, the Committee adopted an amendment offered by Senators Biden and Thurmond, modifying a Kennedy amendment, to retain present law with respect to the interstate sales of firearms with a barrel length of three inches or less.

D. FINAL PASSAGE

On May 10, 1984, a quorum being present, the Committee adopted the modified Hatch amendment in the nature of a substitute, as amended, by voice vote, and ordered the bill favorably reported to the Senate by a roll call vote of 16 to 0, as follows:

YEAS	NAYS
Laxalt	
Hatch	
Dole	
Simpson	
East [1]	
Grassley	
Denton [1]	
Specter	
Biden	
Kennedy	
Byrd [1]	
DeConcini	
Leahy [2]	
Baucus	
Heflin	
Thurmond	

[1] By proxy.

[2] Recorded.

NOTE.—Senator Mathias was absent on Official Business.

IV. COMMITTEE AMENDMENT

The amendment in the nature of a substitute adopted by the Committee makes the following significant changes in S. 914, as introduced:

1. It further clarifies what constitutes being "engaged in the business" of dealing in firearms by defining "with the principal objective of livelihood and profit."
2. It retains current law with respect to the interstate sale of handguns with a

barrel length of three inches or less and permits interstate sales of other firearms where the sale complies with the law of the licensee's state and the state of the purchaser's residence. In the absence of evidence to the contrary, dealers are presumed to have actual knowledge of the laws of both states. The Secretary is required to provide such information to licensees on a timely basis.

3. It spells out circumstances under which the inventory and records of licensed collectors can be inspected.

4. It permits licensed importers, manufacturers and dealers to conduct business at gun shows.

5. It sets out procedures pursuant to which out-of-business records will be stored in the joint custody of the Administrator of General Services and the Secretary of the Treasury and disposed of after twenty years.

6. It spells out some of the information-gathering procedures for tracing firearms and precludes criminal charges based solely on information provided under those procedures.

7. It requires certain reports relating to multiple sales of pistols and revolvers and provides for the subsequent storage and disposition of those reports.

8. It applies a "knowing" state of mind with respect to some offenses in Chapter 44 and a "willful" state of mind with respect to others. Prosecutions are prohibited where the conduct involves "simple carelessness."

9. With one significant change, it incorporates the provisions from the Comprehensive Crime Control Act of 1984 (S. 1762) relating to mandatory penalties for using a firearm or armor-piercing bullet to commit a Federal crime of violence. A person may not be sentenced to mandatory penalties for so using a firearm if the court finds that (1) the use was to protect himself or another, unless the danger resulted from the protected or protecting person's commission of a felony and (2) the imposition of such penalties would constitute "a severe and substantial miscarriage of justice."

10. Firearms may be seized under limited circumstances where they were "intended to be used" in specified crimes, including crimes of violence.

V. Section-by-Section Analysis

The following is a Section-by-Section Analysis of S. 914, as reported by the Senate Judiciary Committee:

The unnumbered section of the bill contains Congressional findings underlying the legislation. The Congress finds that: (1) rights secured to Americans under the Second, Fourth, Fifth, Ninth and Tenth Amendments to the Constitution require additional protective legislation; and (2) Congressional intent in 1968 that Federal firearms laws are not intended to restrict lawful activities of law-abiding citizens, nor to discourage or eliminate private ownership or use of firearms by law-abiding citizens for lawful purposes, should be reaffirmed.

Title 1—Amendments to Title 18 of the United States Code

Section 101, Paragraph (1) clarifies the definition of "manufacturer" in 18 U.S.C. 921(a)(10) by limiting it to those "engaged in the *business* of manufacturing" firearms.[15] This is in keeping with the general purpose of the legislation to limit Federal regulation to those involved in more than isolated activities.

Paragraph (2) through (4) delete references to "ammunition" in the definitions of "dealer," "pawnbroker," and "collector," thus exempting from licensing requirements those who distribute only ammunition. Regulation of such persons, including convenience and general stores, has proved excessively burdensome, without corresponding law enforcement utility.

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[15] Emphasis supplied.

Paragraph (5) amends 18 U.S.C. 921(a)(20), which contains the definition of a "crime punishable by imprisonment for a term exceeding one year." Conviction of such a crime bars a person from receiving, shipping or possessing firearms under 18 U.S.C. 922(d), (g), and (h), as amended by S. 914.

The bill makes four changes in this Paragraph. First, it makes the court, rather than the Secretary, the final arbiter as to what constitutes a "similar offense relating to the regulation of business practices." Second, it removes the exception relating to state firearms laws so that state misdemeanors punishable by two years of imprisonment or less would not be disabling crimes under any circumstances. Third, it requires that a "conviction" must be determined in accordance with the law of the jurisdiction where the underlying proceeding was held. This is intended to accommodate state reforms adopted since 1968, which permit dismissal of charges after a plea and successful completion of a probationary period, or which create "open-ended" offenses, conviction for which may be treated as misdemeanor or felony at the option of the court. Since the Federal prohibition is keyed to the state's conviction, state law should govern in these matters. In the case of "open-ended" offenses which are classed as felonies, but which may be reduced by the trial court, it is intended that these constitute a "crime punishable by imprisonment for a term exceeding one year" unless and until the court enters a decision to treat the offense as a misdemeanor.[16]

Finally, S. 914 would exclude from such convictions any for which the person has received a pardon, civil rights restoration, or expungement of the record. Existing law incorporates a similar provision with respect to pardons in 18 U.S.C. app. 1202, relating to possession of firearms, but through oversight does not include any conforming provision in 18 U.S.C. 922, dealing with their purchase or receipt. This oversight, which resulted in a ruling that a state pardon does not permit a pardoned citizen to receive or purchase a firearm, despite the express provision in the pardon that he may possess it,[17] would be corrected. In the event that the official granting the pardon, restoration of rights, or expungement of record does not intend that it restore the right to firearm ownership, this provision honors that intent as expressly provided in the order or pardon.

Paragraph (6) adds two new definitions to 18 U.S.C. 921(a). Proposed Section 921(a)(21) would define "engaged in the business" with respect to manufacturing firearms and ammunition, dealing in firearms, and importing firearms and ammunition. Existing 18 U.S.C. 922(a)(1) and 923(a) require that those engaged in these businesses obtain a Federal license. Many firearm hobbyists, sell or trade firearms from their collections, and hearings have repeatedly established that many such hobbyists have been charged and convicted for technically violating the broad reading which courts had given this phrase.

Lower courts have applied two different, but similar tests for "engaging in the business." Neither is especially clear, and both can be applied to a hobbyist to whom profit is a secondary objective. Under one test, anyone who "is engaged in any business of selling firearms, . . . which occupies time, attention and labor for the purpose of livelihood or profit" has "engaged in the business." Under the other, anyone who "has guns on hand" or can obtain them and is willing to sell has so engaged.[18] S. 914 would substantially narrow these broad parameters by requiring that the person undertake such activities as part of a "regular course of trade or business with the principal objective of livelihood and profit." It expressly provides with respect to dealers that these requirements do not extend to hobbyists who make occasional sales, exchanges or purchases of firearms for the enhancement of their personal collection, or who sell all or part of a personal collection, nor to those who occasionally do gunsmithing work. In addition to the obvious benefits that would accrue to licensees as a result of this increased specificity, the Administration has indicated that it would benefit law enforcement as well by establishing clearer standards for investigative officers and assisting in the prosecution of persons truly intending to flout the law.[19]

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[16] For instance, the Supreme Court, in *Dickerson v. New Banner Institute, Inc.*, 103 S. Ct. 986 (1983), construed this definition to include guilty pleas where no final judgment had been rendered by the Court. S. 914, as reported, would leave such a determination to the states and would render the *Dickerson* decision inapposite where individual State courts or legislatures have decided to the contrary.

[17] *Thrall v. Wolfe*, 503 F.2d 318 (7th Cir. 1974), cert. denied, 420 U.S. 972 (1975).

At the suggestion of the Administration,[20] a definition of "with the principal objective of livelihood and profit" was added. Under proposed Section 921(a)(22), that term means that "the intent underlying the sale or disposition of firearms is predominately one of obtaining livelihood and pecuniary gain, as opposed to other intents, such as improving or liquidating a personal firearms collection." It does not require that the sale or disposition of firearms be, or be intended as, a principal source of income or a principal business activity. Nor does it apply to isolated sales, unless, of course, such sales are part of a regular course of business with the principal objective of livelihood and profit. Thus, this provision would not remove the necessity for licensing from part-time businesses or individuals whose principal income comes from sources other than firearms, but whose main objective with regard to firearm transfers is profit, rather than hobby. A sporting goods or retail store which derived only a part of its income from firearm sales, but handled such sales for the "principal objective of livelihood and profit," would still require a license.

Unlike S. 1030, and at the request of the Administration,[21] the Committee amendment deletes the reference to 18 U.S.C. 921(a)(11)(C), which defines a "dealer" to include "any person who is a pawnbroker," from the definition of "engaged in the business" of dealing with firearms. This was a purely technical change. 18 U.S.C. 921(a)(11)(C), unlike 18 U.S.C. 921(a)(11) (A) and (B), does not use the term "engaged in the business." Thus, that definition is inapplicable to pawnbrokers. Under 18 U.S.C. 921(a)(11)(C) and (12), all pawnbrokers whose business includes the taking of any firearm as security for the repayment of money would automatically be a "dealer." [22]

Section 102 of the bill makes several changes throughout 18 U.S.C. 922 to reflect the deregulation of ammunition-only sales and shipments.

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[18] Cf. *U.S. v. Williams*, 502 F.2d 581 (8th Cir. 1974) (quoting *Stone v. District of Columbia*, 198 F.2d 601, 603 (D.C. App. 1952)), with *U.S. v. Swinton*, 521 F.2d 1255 (10th Cir. 1975), cert. denied, 424 U.S. 918 (1975).

[19] S. 914 hearings, supra note 9, at 47.

[20] Id. at 16, 26.

[21] Id. at 25.

[22] The S. 1030 report, supra note 4, at 18, specifically emphasized the committee's intent to cover pawnbrokers among persons required to be licensed.

Paragraph (2) of Section 102 permits an individual to mail firearms legaly owned under Federal, state and local law to a licensed manufacturer, importer, dealer or collector. Under existing law, such shipments to licensed manufacturers, importers and dealers were specifically authorized for the purpose of repair or customizing. There was no specific prohibition against shipments to licensees for other lawful purposes. This change would clarify existing law and would authorize shipments to licensed collectors, but would not authorize mail-order sales by licensees to non-licensees.

Paragraph (4) of Section 102 makes a significant change in current law. Under existing 18 U.S.C. 922(b), licensees are prohibited from selling or delivering firearms to persons whom they know or have reasonable cause to believe are non-residents of the licensee's state, with five exceptions. First, under 18 U.S.C. 922(b)(3)(A), rifles or shotguns can be sold to residents of contiguous states if (1) the purchaser's state law permits the sale, (2) it fully complies with the "legal conditions of sale" in both states, and (3) prior to the sale or delivery, (A) the purchaser executes a sworn statement that he is not a prohibited person and that his receipt of the firearm would not violate his state or local law, (B) the licensee sends to, and receives evidence of receipt or refusal of receipt by the chief law enforcement officer of the purchaser's state, a copy of that statement and a description of the firearm, and (C) the purchaser delays shipment for seven days after receiving such evidence (i.e., complies with a "waiting period"). Second, 18 U.S.C. 922(b)(3)(B) permits a licensee to rent or loan a firearm to a person for temporary use for lawful sporting purposes. Third, under 18 U.S.C. 922(a)(2)(A), certain licensees may return a firearm or replacement to the person from who it was received and individuals may mail legally owned firearms to certain licensees for repairs.[23] Fourth, a person participating in an out-of-state hunt or contest may purchase a replacement rifle or shotgun under 18 U.S.C. 922(b)(3)(C) if he executes a sworn statement that his own was lost, stolen, or rendered inoperative and identifies his chief law enforcement officer. Finally, under 18 U.S.C. 922(a)(2)B), certain licensees may mail firearms capable of being concealed on the person to certain persons for use in connection with their official duties if those persons are eligible to receive firearms through the mail under 18 U.S.C. 1715.

Under the Hatch substitute adopted by the Committee, the exceptions contained in 18 U.S.C. 922(b)(3) (A) and (C) would be expanded to permit a licensee to sell a firearm with a barrel length of greater than three inches to a resident of any other state, if the sale, delivery and receipt of that firearm fully comply with the length conditions of sale in both states. Licensed manufacturers, importers, and dealers are presumed, in the absence of evidence to the contrary, to have actual knowledge of the state laws and published local ordinances of both states. Current exceptions relating to loans and rentals would remain unchanged. Like S. 1030, S. 914, as reported by the Committee, would not permit "mail-order" sale to non-licensees.

Existing restrictions were intended to prevent the use of interstate sales to defeat state and local gun restrictions. However, according to the Administration, the conditions which must accompany those sales (i.e., the paperwork and "waiting period") have proved so cumbersome that they are rarely used. As a result, as in the 97th Congress, the Committee decided to enlarge the circumstances under which licensees could sell firearms to nonresidents, with limited conditions designed to facilitate effective and legitimate law enforcement. The provisions in S. 914 contain two major changes from S. 1030.

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[23] Such transactions must also comply with 18 U.S.C. 1715.

First, based on the suggestions from the Administration,[24] interstate sales are restricted to those made by a licensee. The Administration felt, and the Committee agreed, that this change would facilitate Federal law enforcement by limiting it to recorded sales and would "enable the states to exercise more effective control over illegal firearms traffic within their own jurisdictions and * * * avoid the circumvention and contravention of state and local laws governing the acquisition of firearms.[25]

The second change made by the Committee retained existing law with respect to firearms with a barrel length of three inches or less. This amendment was adopted in response to concerns expressed by some Members of the Committee. However, there was strong sentiment in support of relieving purchasers of long handguns, rifles and shotguns from the burdensome paperwork and waiting period requirements which exist in current law. The Committee's decision to except firearms with a barrel length of three inches or less from changes in existing interstate sale restrictions applies to one limited instance and is not intended to be construed as a determination that such a distinction among firearms is necessarily appropriate in any other instance.

Since licensees are presumed to have knowledge of existing state law and published local ordinances under the Committee amendment, Section 109(1) of the bill requires the Secretary of the Treasury, upon the effective date of the Act, to publish and provide to all licensees a compilation of the state laws and published ordinances of which licensees are presumed to have knowledge. Any amendments thereto are required to be published in the Federal Register, revised annually, and furnished to each licensee.

In view of the stiff penalties to which a licensee is potentially subject under the bill, the Committee anticipates that the Secretary will make every effort to ensure the accuracy and completeness of the information required to be provided. Furthermore, where a dealer feels uncertain about the requirements of the law of the state of the purchaser's residence, he may, of course, decline to make a sale to such person. Alternatively, he could require of the purchaser that the transaction be conducted through a licensee in the purchaser's own state.

With respect to the requirement that the purchase comply with the laws of both states, restrictions which are meant to have no extraterritorial application are not violated by transactions outside the locality. A law restricting modes of conducting business within a locality, and applicable only to sales within the locality and not to purchases made by its residents elsewhere, is not violated by a resident's purchase of a firearm outside its boundaries. Conversely, a waiting period on delivery of a firearm to a resident, wherever bought in the state, and permit systems relating to ownership or possession of a firearm, wherever bought, are intended to have application outside a locality's boundaries and must be honored.

Paragraphs (C), (D), and (E) of Section 102(4) of the Committee's amendment repeal 18 U.S.C. 922(b)(3)(C), which permits a non-resident participating in an organized rifle or shotgun match or hunting to purchase a rifle or shotgun if his own is stolen, lost or rendered inoperative, upon compliance with certain conditions. The changes made by the Committee amendment in the general interstate sales provisions in clause (A) alleviate the need for this specific authority.

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[24] S. 914 hearings, supra note 9, at 12, 15, 30.

[25] Id. at 12.

In the 97th Congress, the Committee adopted an amendment offered by Senator Kennedy, as modified by an amendment offered by Senator Dole, which would have amended 18 U.S.C. 922(b)(5) to require a Federal fourteen-day waiting period prior to the delivery of handguns by licensees, with two exceptions. First, the delay period did not apply where the chief law enforcement officer of the purchaser's place of residence certified to the seller that immediate delivery was necessary to protect against a threat of immediate danger to the physical safety of the buyer. Second, immediate delivery would have been permitted where the purchaser provided proof that he had purchased another handgun within the previous twelve months in compliance with the fourteen-day waiting period.

By a vote of 11 to 3, the Committee declined to adopt a similar amendment offered by Senator Kennedy to S. 914. That amendment would have added a new Paragraph (6) to 18 U.S.C. 922(b) to prohibit licensees from selling handguns unless (1) the purchaser provided the licensee with a sworn statement like the one currently prescribed in 18 U.S.C. 922(c)(1); (2) the licensee forwarded that statement and a description of the handgun to the chief law enforcement officer in the purchaser's place of residence; and (3) the licensee delayed delivery for at least fourteen days after receiving evidence of receipt by such law enforcement officer. The latter requirement would not apply in the case of notice from the law enforcement officer that immediate danger necessitated immediate delivery of the handgun.

As the Administration arged,[26] the question of whether a waiting period should be imposed in connection with the purchase of firearms is a matter of decision for the states. The burden of a waiting period should not be imposed on legitimate sportmen and persons concerned with self-defense in light of the fact that guns used by criminals can be obtained through illegal channels.[27] In addition, most crimes are committed late at night when firearms generally cannot be procured from licensees. Finally, studies do not consistently and conclusively demonstrate that state- and locally imposed waiting periods have been effective in reducing crime.

Paragraph (5) of the Committee amendment expands 18 U.S.C. 922(d), which prohibits sales or dispositions of firearms or ammunition by licensees to those commonly referred to as "prohibited persons," to include sales by nonlicensees as well. In the Committee's judgment, legitimate law enforcement interests will be substantially furthered by Federal penalties for such sales where the seller knows or has reasonable cause to believe that the purchaser is a prohibited person and willfully engages in the proscribed conduct.

Paragraphs (5), (6), and (7) of Section 102 are designed to provide consistency in the lists of persons prohibited from possessing, receiving and transporting firearms and ammunition under current law. Existing law is deficient in that 18 U.S.C. 922 (d), (g) and (h) list four classes of persons forbidden firearms receipt, shipment, and transportation, while 18 U.S.C. app. 1202 defines five classes—only two of which resemble the categories contained in Section 922. Thus, for instance, fugitives from justice and users of certain drugs are forbidden firearms receipt, but not firearm possession.

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[26] Id. at 14.

[27] Id. at 91-93 (testimony of Senator McClure).

S. 914 replaces these inconsistent rules with a straightforward and consistent one. As amended by the Committee, the affected subsections of 18 U.S.C. 922 would prohibit firearm and ammunition possession, receipt or transportation, in commerce, by convicted felons, fugitives from justice, users of certain drugs, persons subject to an adjudication as a mental defective or a commitment order, illegal aliens, those who have received a dishonorable discharge, and those who have renounced their citizenship. Furthermore, 18 U.S.C. app. 1202 would be repealed under Section 201 of the bill.

Paragraph (7) of Section 102 also amends 18 U.S.C. 922(h) to impose a prohibition on shipping, transporting, possessing or receiving firearms in commerce while knowingly in the course of employment by any prohibited person. For purposes of this Subsection, a "prohibited person" would not include one under indictment for a felony. Finally, Paragraph (8) of Section 102 adds a new 18 U.S.C. 922(n) retaining the current ban on firearm receipt and shipment by one under indictment for a felony.

Section 103 makes several changes in 18 U.S.C. 923, which relates to the issuance of Federal firearms licenses and duties of licensees.

Paragraph (1)(A) exempts from federal licensing requirements imposed by 18 U.S.C. 923(a) persons who are engaged in the business of dealing in ammunition only. As stated earlier, the Committee determined that such licensing was not necessary to facilitate legitimate Federal law enforcement interests. Conforming changes relating to deregulation of ammunition-only sales are made throughout Section 923 by the Committee amendment.

Paragraph (1)(A) also specifies that information required by the Secretary of the Treasury in connection with a license application is limited to that "necessary to determine eligibility for licensing." This is designed to avoid informational burdens on licensees which are not needed for legitimate law enforcement purposes. A similar limitation appears in Paragraph (2) with respect to information required to be supplied by licensed collectors under 18 U.S.C. 923(b).

Paragraph (3) of Section 103 adds two provisos to 18 U.S.C. 923(c), which permits Federal licensees to transport, ship and receive firearms and ammunition in interstate or foreign commerce. The effect is to clearly authorize licensees to maintain private firearms collections which are completely independent of their business operations. Existing requirements that licensees maintain inventory and disposition records on the business premises, and records on firearms sold, have led to a construction that all sales by a licensee, even of firearms from his own collection, kept at his home, and never part of the business inventory, must be recorded.[28] The Committee has heard testimony from one licensee who, on the one hand, was told by Federal agents that sales from his personal collection did not have to be recorded, and on the other hand, was arrested and convicted for failure to record such sales. The Committee has also received evidence that the enforcing agency itself vacillated on the question of whether and how much sales must be recorded.[29] The need for a concise, clear standard is evident.

Section 103(3) of S. 914, as reported, sets such a standard. It amends 18 U.S.C. 923(c) to clarify that a licensee is permitted to maintain and dispose of a private firearms collection on equal terms with a private, non-licensed person. S. 914, as reported, also incorporates two restrictions on his right. First, if the licensee transfers firearms from his inventory into his collection, they are deemed to remain part of the inventory for one year after the transfer, and are subject to all recording requirements if sold during that period. The licenssee would be required to retransfer any such firearms into his inventory, then transfer them at his premises with appropriate recording. A second restriction would deem the firearm part of the licensee's business inventory if he made the transfer or any acquisition with the intent of willfully evading his duties as a licensee—with primary intent to make improper transfers later, rather than to promote his collection. These limitations will prevent a licensee from acquiring or transferring firearms into his personal collection in order to evade his duties as a license.

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[28] See, e.g., *U.S. v. Scherer*, 523 F. 2d 371 (7th Cir. 1975), cert. denied, 424 U.S. 911 (1976).

[29] See, S. 1030 report, supra note 4, at 20, citing S. 1030 hearings, supra note 7.

At the suggestion of the Administration, in the modified Hatch substitute, evasive acquisitions, as well as dispositions, would result in the firearms being deemed part of the business inventory. This change was made in order to ensure that circuitous transfers are not exempt from otherwise applicable licensee requirements.

Paragraph (4) of Section 103 amends 18 U.S.C. 923(e) to provide that the Secretary may revoke a license only for "willful" violations of Chapter 44 or any regulation prescribed by the Secretary thereunder. The purpose of this change is to ensure that licenses are not revoked for inadvertent errors or technical mistakes. Furthermore, it codifies current case law by requiring "willful" violations of Chapter 44 as a ground for license revocation, just as a "willful" violation of Chapter 44 would preclude mandatory issuance of a license under 18 U.S.C. 923(d)(1)(C) and (D).[30]

Paragraph (5) of Section 103 amends in two respects 18 U.S.C. 923(f), which sets out license denial and revocation procedures. First, it expressly provides that judicial review by the Federal district court shall be "de novo," and emphasizes that the court may consider any evidence submitted by the parties to the judicial review proceeding, whether or not that evidence was considered in any administrative hearing held under 18 U.S.C. 923(f)(2).

These changes address decisions by some courts which have construed existing law to authorize avoiding a formal fact-finding hearing unless "substantial doubt" as to the factual findings of the Secretary is apparent.[31] The Committee's amendment is intended to encourage de novo judicial hearings under 18 U.S.C. 923(f).

A second change, which adds a new Paragraph (4) to 18 U.S.C. 923(f), bars license revocation based on charges of which the licensee has been vindicated in a criminal action. The purpose is to eliminate the situation, documented in hearings before the Committee, where a license was acquitted of charges, then revocation proceedings were subsequently instituted. This situation had the result of burdening an affected licensee with additional costs of legal defense, despite his initial vindication. Thus, in cases where a defendant has been acquitted of criminal charges, or where charges are terminated (except upon motion by the government prior to trial), proposed 18 U.S.C. 923(f)(4) would prohibit the Secretary from denying or revoking a license where his action is based in whole or in part on facts which formed the basis of the criminal charges. In no event may any such revocation proceeding be instituted by the Secretary more than one year after the filing of an indictment or information.

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[30] See, e.g., *Rich* v. *U.S.*, 383 F. Supp, 797, (S.D. Ohio, 1974) (". . . [R]evocation [for error, inadvertence, or simple ignorance of regulation] then becomes an exercise in futility if thereafter the Secretary by the plain language of Subsection 923(d) must reissue the license absent a showing of willful violation. It cannot be that Congress intended this formalistic paradox."), *Shyla* v. *Director, BATF*, 448 F. Supp. 409 (M.D. Pa. 1977), *Mayesh* v. *Schultz*, 58 F.R.D. 537 (S.D. III. 1973).

[31] See, e.g., *Perri* v. *Dept. of Treasury*, 637 F.2d 1332 (9th Cir. 1981), *Cucchiara* v. *Secretary*, 652 F.2d 28 (9th Cir. 1981).

To ensure that the prosecuting agency has needed flexibility to drop criminal charges and proceed with revocation where its evidence proves insufficient for the former, but sufficient for the latter, the government is permitted to terminate criminal proceedings voluntarily prior to trial and still proceed civilly. Furthermore, this Section is not meant to preclude license revocation or denial where the acquittal relates to transactions or activities which are different from those involved in the license revocation proceedings.

18 U.S.C. 923(g), relating to recordkeeping and administrative searches of licensee premises, is amended by Paragraph (6) of Section 103 of the bill reported by the Committee to grant licensees protection against warrantless or unreasonable searches and seizures. Under current law, all licensees are required to maintain with respect to their activities such records as the Secretary may prescribe in regulations. Records must be made available for inspection at "all reasonable times" and licensees must submit to the Secretary any reports required by regulations. Agents of the Secretary are authorized to enter the licensee's business premises during business hours to inspect required records and inventory.

As reported by the Committee, S. 914 amends 18 U.S.C. 923(g) to distinguish between licensed collectors and other licensees, since the need for recordkeeping and inspections differs with respect to each. Under proposed Section 923(g)(1), licensed dealers, importers, and manufacturers continue to be required to maintain records pursuant to regulations prescribed by the Secretary. Such licensees are only required to report to the Secretary concerning such records where explicitly required by S. 914. This would include, for instance, multiple sales reports and certain informational reports used in connection with tracing.[32]

With respect to records and inventory inspections, proposed Section 923 (g)(1) would permit enforcing agents to enter the premises of any licensee during business hours for such examination. This power is subject to two limitations. First, there must be reasonable cause, not necessarily probable cause, to believe a violation of law has occurred and that evidence of the violation may be found on the premises. Second, this reasonable cause must be demonstrated before a Federal magistrate and a warrant must be obtained. The warrant requirement serves to protect against unreasonable exercises of power and to limit the scope of the intrusion. Furthermore, the record created by the application and affidavit will provide a basis upon which to judge the propriety of such actions.

Section 923(g)(1), as amended by the Committee, creates exceptions to the requirements of establishing reasonable cause and obtaining a warrant, where any of three circumstances exists. An exception is granted, first, with respect to investigators where the intrusion is a reasonable inquiry during the course of a criminal investigation of persons other than the licensee himself. Such inquiries may occur before there is reasonable cause to believe that any particular person committed an offense. To require proof of such violation might unduly hinder legitimate law inforcement. Second, an exception is granted for annual inspections, which are frequently routine or "courtesy inspections," the purpose of which is not investigation, but assistance to the licensee by pointing out minor recordkeeping errors. These may be made not more often than once a year, upon reasonable notice, and may not be the basis of a prosecution except for willful violations of recordkeeping requirements and sales to prohibited purchasers. Finally, an exception is granted for inquiries directed at determining the disposition of a particular firearm or firearms in the course of a bona fide criminal investigation.

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[32] See, e.g., proposed 18 U.S.C. 923(g)(4) and (5), discussed in more detail infra.

S. 1030 would have removed virtually all recordkeeping inspection requirements with respect to licensed collectors. On the recommendation of the Administration,[33] limited requirements were retained to preserve an appropriate balance between legitimate law enforcement interests and the need to minimize any potential for unnecessary governmental intrusion into the activities of licensed collectors. Although the Committee is not aware of substantial problems which have arisen with respect to licensed collectors, minimal inspection requirements were preserved to ensure that no incentive for unlawful activity would be created.

Under the Committee's amendment to 18 U.S.C. 923(g)(1), the Secretary would be permitted to inspect the inventory and records of licensed collectors without reasonable cause of warrant (1) not more than once annually, with reasonable notice, or (2) when necessary for tracing firearms in the course of a bona fide criminal investigation. Criminal charges based on the first type of inspection are limited to those involving willful recordkeeping violations or sales or other dispositions of firearms to prohibited persons. In light of the special needs of collectors, whose "business premises" are more often than not their homes or appurtenances thereto, the proposed amendment to Section 923(g)(1) authorizes, at the election of the licensed collector, the performance of permitted annual inspections of records and inventory at the BATF office designated by the Secretary which is closest to the collector's premises.[34] The collector will thus be afforded an opportunity to avoid any unwanted government entrance into his home. Of course, if he chooses not to avail himself of that opportunity, the inspection may be performed at his "business premises."

Proposed Section 923(g)(2) sets out the records requirements with respect to licensed collectors. Reports to the Secretary concerning such records cannot be mandated, unless explicitly required by S. 914.

Whatever the basis of any inspection or investigation of licensees under proposed 18 U.S.C. 923(g)(1), the enforcing agency is authorized to physically seize only records which are material to a violation of law. Copies of these must be provided to the licensee within a reasonable time. The Secretary is authorized to share with Federal, state, and local law enforcement agencies information obtained under Chapter 44 which relates to the identification of prohibited persons who have purchased or received firearms or ammunition, and a description of items purchased. He may provide information contained in records maintained under Chapter 44 when requested by any such agency.

Paragraph (6) of Section 103 adds three new paragraphs to proposed Section 923(g) which did not appear in S. 1030. As amended by the Committee, 18 U.S.C. 923(g)(3)(A) would require records maintained by a licensee who has discontinued his business to be delivered within 30 days to the joint custody of the Administrator of General Services and the Secretary. Those records will be stored in a records center operated by the GSA. The Administrator and the Secretary may arrange for delivery of such records to a state or local authority where required under state or local law.

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[33] S. 914 hearings, supra note 9, at 17, 36-37.

[34] Of course, any transporting of inventory to the Secretary's designated office would have to comply with applicable Federal, State, and local law.

Proposed Section 923(g)(3)(A) replaces existing Treasury Department regulations pursuant to which the Secretary of the Treasury may retain "out of business" records indefinitely.[35] The requirement that such records be jointly held by the Secretary and the Administrator is intended to reassure law-abiding gun owners that such records will not become part of a centralized record system or system of registration. Furthermore, under proposed Section 923(g)(3)(B), the Secretary's access to records is limited to access needed for tracing firearms used in criminal offenses, organizing and preserving such records, and testifying in court or administrative proceedings. The Secretary may remove records for the latter purpose only. Again, these limitations are intended to facilitate bona fide law enforcement needs, while removing any potential for abuse, although the committee has received no testimony at its hearings of any specific instances where "out-of-business" records have been misused.

Under proposed Section 923(g)(3)(C), the Administrator of General Services is authorized to promulgate "housekeeping" regulations, except insofar as any such regulation might restrict the Secretary's access or removal authority under proposed Section 923(g)(3).

Finally, under proposed Section 923(g)(3)(D), notwithstanding any other provision of law, the Administrator of General Services is required to dispose of stored out-of-business records kept by licensed dealers and collectors, and disposition records maintained by manufacturers and importers, twenty years after receipt. This requirement is patterned after regulations recently proposed by the Department of the Treasury[36] and is designed to preserve only records legitimately needed for law enforcement purposes.

Proposed Section 923(g)(4) is based on existing Treasury regulations[37] describing activities which facilitate the Secretary's ability to trace the disposition of firearms in connection with criminal investigations. When required by a letter from the Secretary, the licensee must submit all record information required under Chapter 44 for specified periods of time. Alternate reporting methods may be accepted under certain circumstances. However, a warrant may not issue, nor may criminal charges be brought against a licensee based solely on information obtained in connection with a request authorized under Paragraph (g)(4). This provision only precludes warrants and charges based solely on information contained in such a report. Warrants and charges based on other information, in addition to that in the report, would not be prohibited. Furthermore, information developed on the basis of report information would not be excludable under any "fruit-of-the-poisonous-tree" theory.

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[35] 27 CFR 178.127 (1983).

[36] 49 Fed. Reg. 5628 (1984) (to be codified at 27 C.F.R. pt. 178) (proposed February 14, 1984) (hereinafter cited as Proposed Treasury Regulations). After December 15, 1988, the proposed regulations would permit licensed dealers and collectors to dispose of records, and licensed importers and manufacturers to dispose of disposition records, if such records are over 20 years of age or relate to transactions prior to December 16, 1968. Licensed importers and manufacturers would be required to retain acquisiton records permanently.

[37] 27 CFR 178.126 (1983).

The purpose of Paragraph (4) is to clarify and ensure the Secretary's authority to conduct legitimate tracing activities in connection with bona fide criminal investigations. The authority granted to the Secretary under this Paragraph is intended to provide access to all information legitimately needed in sensitive criminal investigations, such as the investigation of President Reagan's attempted assassination. However, because of the breadth of the authority granted, limitations on the use of such information, which do not exist under current regulations, were included to restrict any potential for the abuse of the rights of law-abiding licensees.

Paragraph (6) of Section 103 of the bill reported by the Committee also adds a new Section 923(g)(5) to Title 18 of the United States Code, which essentially codifies existing Treasury Department regulations requiring licensees to prepare reports relating to "Multiple sales," i.e., sales of two or more pistols and/or revolvers to a nonlicensee which take place simultaneously or over the course of five consecutive business days.[38] Such reports must be forwarded to the Secretary by the close of business on the date that the multiple sale or disposition occurred. It is the intent of the Committee that these reports will be kept by the Secretary in a non-centralized fashion during the first ten years after receipt.

Section 923(g)(5), as reported by the Committee, differs from existing regulations in one significant respect. It requires the Secretary to deliver such reports, ten years after receipt, to the joint custody of the Administrator of General Services and himself to be stored and maintained pursuant to proposed 18 U.S.C. 923(g)(3) (B) and (C), as discussed in more detail above. Such records are to be disposed of ten years after receipt into the joint custody of the Secretary and the Administrator. Again, these time limitations are patterned after recently proposed Treasury Department regulations.[39]

The multiple sales, out-of-business records, and tracing provisions, which, in certain respects, codify existing regulations, were included in the Committee amendment to achieve an appropriate balance between legitimate law enforcement needs and the Committee's determination to substantially restrict the circumstances under which inspections are authorized. This, in turn, reduces the potential for unwarranted intrusions into the business affairs of law-abiding licensees. However, the Committee wishes to emphasize that, notwithstanding any other provision of law, the authority granted under 18 U.S.C. 923(g) (3), (4) and (5), as well as that contained in paragraph (1), as amended, are not to be construed to authorize the United States or any state or political subdivision thereof, to use the information obtained from any records or forms which are required to be maintained for inspection or submission by licensees under Chapter 44 to establish any system of registration of firearms, firearms owners, or firearms transactions or dispositions.

Paragraph (7) of Section 103 of the bill is a change from the bill reported in the 97th Congress. As recommended by the Administration,[40] it would amend 18 U.S.C. 923(j) to permit licensed importers, manufacturers and dealers to conduct business at gun shows for the first time since the Gun Control Act of 1968 was enacted. Under current law,[41] a licensee may not conduct business at any location other than the one specified on his license, i.e., his business premises. This precludes all temporary locations, such as organized gun shows. By contrast, non-licensees, who are not engaged in the business of dealing in firearms, may sell firearms at such gun shows. This situation is unfair to Federally licensed dealers.

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[38] 27 CFR 178.126a (1983). The committee intends the provisions of proposed 18 U.S.C. 923(g)(5) to apply to cases illustrated in these existing regulations.

[39] Proposed Treasury Regulations, supra note 36.

[40] S. 914 hearings, supra note 9, at 12, 16, 37.

[41] 18 U.S.C. 923(a), (d)(1)(E), (g), (h); Rev. Rul. 59, 1969-1 C.B. 360.

To remedy this incongruity, the bill reported by the Committee would permit licensed importers, manufacturers and dealers to conduct business temporarily at locations other than that specified in their licenses, within the same state, pursuant to regulations issued by the Secretary of the Treasury. The licensee would be generally subject to the same legal requirements to which he would be subjected at his business premises, including, in particular, recordkeeping requirements. However, for example, the licensee, under this provision, could not be required to produce for inspection at his temporary location records relating to sales at his regular place of business which are required to be kept there.

"Temporary location" for purposes of the proposed subsection is essentially intended to cover legitimate, organized gun shows. For purposes of clarity, proposed 18 U.S.C. 923(j) specifically excludes any business conducted in or from a motorized or towed vehicle. Under no circumstances could this provision be construed to authorize the business sale of firearms by a Federal licensee out of the trunk of a car.

While 18 U.S.C. 923(j), as amended by the Committee, would remove a significant and unnecessary burden on Federal licensees, to ensure that the new provision achieves that purpose, it includes two limitations. First, the Subsection is not to be construed to authorize inspections at temporary locations of records and inventory other than those which are directly related to transactions made at the temporary location within the period of time during which such business was conducted. This will ensure that dealer participation in gun shows does not give rise to any inspections not in keeping with the purposes of S. 914. Second, the provision explicitly states what would otherwise be the case--that the Subsection is not to be construed to diminish in any manner any right to display, sell or otherwise dispose of firearms or ammunition in effect prior to the effective date of the Subsection. This would include, for instance, existing rights of non-licensees to transact exchanges at gun shows.

Section 104 of the bill as reported by the Committee contains amendments to Section 924 of Title 18, which imposes criminal penalties for violations of Chapter 44.

Paragraph (1) of Section 104 makes a major change in 18 U.S.C. 924(a) by requiring for the first time the proof of criminal states of mind with respect to all of the activities proscribed in Chapter 44. Under existing law, the maximum penalties for violating any provision of Chapter 44 or for knowingly making any false statement with respect to information required to be kept in licensee records or supplied in connection with license, exemption or relief from disability applications are a $5,000 fine and/or five years of imprisonment. In short, all violations constitute felonies. While some activities proscribed in Chapter 44 contains a criminal state of mind,[42] many do not.[43] As a result, persons can be subject to prosection and harsh penalties for what are essentially technical violations of a regulatory scheme. In addition, even where states of mind have been spelled out in Title 18, certain court decisions have created the need for Congress to clarify what type of intent should trigger criminal penalties.

As introduced, S. 914 would have required the prosecution to prove beyond a reasonable doubt that any offense under Chapter 44 had been committed "willfully." The purpose of that change was to avoid prosecutions in cases where, for instance, a licensee carelessly committed a technical recordkeeping violation or other minor, inadvertent infraction. However, the Committee was receptive to concerns expressed by the Administration [44] that requiring a "willful" state of mind in some instances could pose legitimate law enforcement problems.

For this reason, the Committee amendment specifies a "knowing" state of mind with respect to offenses that involve the greatest moral turpitude and danger from a justified law enforcement standpoint. Thus, proposed Sections 924(a) (1) through (4) provide for criminal penalties where the offender knowingly commits specified offenses. Otherwise, under proposed 18 U.S.C. 924(a)(5), a "willful" state of mind is applicable. For purposes of 18 U.S.C. 924(a), the Committee intends "willful" conduct to cover situations where the offender has actual cognizance of all facts necessary to constitute the offense, but not necessarily knowledge of the law.

18 U.S.C. 924(a)(1), as reported by the Committee, would essentially retain existing provisions in Section 924(a) with respect to false statements. Proposed Paragraph (2) would apply the knowing state of mind to 18 U.S.C. 922(a)(4) (unauthorized transportation of destructive devices and other similar items by non-licensees), 18 U.S.C. 922(a)(6) (false statement to licensee in connection with firearm acquisition), 18 U.S.C. 922(f) (unlawful transportation of firearms by common carriers), 18 U.S.C. 922(g) (shipment, possession or receipt of firearms by prohibited persons), 18 U.S.C. 922(h) (shipment, possession or receipt of firearms by employee of prohibited person), 18 U.S.C. 922(i) (shipment of stolen firearms), 18 U.S.C. 922(j) (receipt or disposition of stolen firearms), and 18 U.S.C. 922(k) (shipment or receipt of firearms with altered serial numbers). Paragraph (3) would require a "knowing" state of mind with respect to the portion of 18 U.S.C. 922(l) which relates to unlawful importation of firearms. Receipt of such firearms would require a "willful" state of mind under proposed 18 U.S.C. 924(a)(5). Finally, proposed 18 U.S.C. 924(a)(4) would require a knowing state of mind with respect to offenses contained in Section 924, i.e., shipment or receipt of a firearm with intent to commit an offense or knowledge that one will be committed under 18 U.S.C. 924(b), and use of a firearm to commit a felony under 18 U.S.C. 924(c).

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[42] See, e.g., 18 U.S.C. 922(a)(5) (Sale by nonlicensee to person whom he "knows or has reasonable cause to believe" is a nonresident); 18 U.S.C. 922(a)(6) (knowingly making false statement to licensee in acquiring firearm); 18 U.S.C. 922(b)(1) (sale by licensee to purchaser he "knows or has reasonable cause to believe" is under age); 18 U.S.C. 922(d) (sale by licensee 'knowing or having reasonable cause to believe" purchaser is a prohibited person); 18 U.S.C. 922(i) (shipment of firearm "knowing or having reasonable cause to believe" it was stolen).

[43] See, e.g., 18 U.S.C. 922(a)(1) (engaging in a firearms-related business without a license); 18 U.S.C. 922(a)(2) (licensee shipments to nonlicensee); 18 U.S.C. 922(g) (shipment of firearm by prohibited person); 18 U.S.C. 922(h) (receipt of firearm by prohibited person).

[44] S. 914 hearings, supra note 9 at 22, 38.

The willful state of mind applies to all other offenses. These were determined to be generally more regulatory in nature, and warranted a higher state of mind to avoid the application of criminal penalties in inappropriate circumstances. These include purely recordkeeping offenses[45] and others which, from a legitimate law enforcement standpoint, do not require less demanding state of mind requirements.[46]

As reported by the Committee, 18 U.S.C. 924(a) would preclude the prosecution of any person under that Subsection where his conduct involved "simple carelessness." The purpose of this change is to address certain court cases which might give aid and comfort to an interpretation that some conduct which involves a purely subjective state of mind, rather than truly criminal activity, could give rise to prosecution. The change made by the amendment adopted by the Committee is designed to preclude the imposition of penalties in situations which involve simple carelessness, as opposed to any criminal intent. To the extent that they imply otherwise, this language is intended to set aside *United States* v. *Graves*, 394 F.Supp. 429 (W.D.Pa.1975), aff'd, 554 F.2d 65 (3rd Cir. 1977), *United States* v. *Thomas*, 484 F.2d 909 (6th Cir. 1973), cert. denied, 414 U.S. 912 (1973), and any potential application of *United States* v. *Werner*, 160 F.2d 438 (1947), to Chapter 44 offenses.

Paragraph (2) of Section 104 of S. 914, as reported by the Committee, amends 18 U.S.C. 924(c), which established additional penalties for the use of a firearm during the commission of a Federal crime of violence and for carrying a firearm in furtherance of a Federal crime of violence. These changes are intended to increase the penalties for criminal misuse of firearms significantly by making such penalties mandatory at a level above the minimum authorized under current law. Existing law imposes additional penalties, but does not rule out probation except upon a second conviction, and fails to rule out parole or furlough releases even for repeat offenders.

In addition to these problems, certain Supreme Court decisions have negated the Section's use in cases involving statutes which have their own enhanced, but not mandatory, punishment provisions in situations where the offense is committed with a dangerous weapon.[47] These are precisely the type of extremely dangerous offenses, such as bank robbery[48] and assault on a Federal officer,[49] for which a mandatory punishment for the use of a firearm is the most appropriate. The Committee concluded that Subsection 924(c) should be completely revised to ensure that all persons who commit Federal crimes of violence involving a firearm, including those which already provide for enhanced sentences,[50] should receive a mandatory sentence, without the possibility of a probationary sentence, parole, or the sentence running concurrently with that for the underlying offense or any other crime.

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[45] 18 U.S.C. 922(b)(5).

[46] 18 U.S.C. 922(a)(1) (engaging in the business without license); 18 U.S.C. 922(a)(2) (certain shipments by licensees to nonlicensees); 18 U.S.C. 922(a)(3) (receipt or transportation by nonlicensee of firearm from another State); 18 U.S.C. 922(a)(5) (transfer of firearm by nonlicensee to nonresident); 18 U.S.C. 922(b) (licensee sales to juveniles, persons whose State law prohibits such purchase, certain nonresidents; licensee sales of machineguns and destructive devices; licensee sales without required recordkeeping); 18 U.S.C. 922(c) (sales to buyers who do not appear in person); 18 U.S.C. 922(d) (licensee sales to prohibited persons); 18 U.S.C. 922(e) (arranging common carrier transportation to nonlicensees without notice to carrier); 18 U.S.C. 922(l) (only that portion relating to receipt of illegally imported firearms); 18 U.S.C. 922(m) (licensee failure to keep required records); 18 U.S.C. 922(n) (shipment or receipt of firearms by indicted person); 18 U.S.C. 923 (licensing requirements and failure to place serial numbers on imported or manufactured firearms).

[47] See, e.g., *Simpson* v. *U.S.*, 435 U.S. 6, 10 (1978); *Basic* v. *U.S.*, 446 U.S. 398 (1980).

[48] 18 U.S.C. 2113.

[49] 18 U.S.C. 111.

Based on a suggestion by the Administration,[51] the Hatch substitute adopted by the Committee includes an amendment to Section 924(c) which, with some modifications, incorporates virtually verbatim the language from Title X, Part D, of S. 1762, the Comprehensive Crime Control Act of 1984, which passed the Senate on February 2, 1984, by a vote of 91 to 1. It also includes a refinement designed to restrict the applicability of mandatory penalties to cases where they will have the greatest deterrent effect.

As amended by S. 914, Section 924(c) provides for a mandatory, determinate sentence for a person who uses a firearm during and in relation to, or carries a firearm in furtherance of any Federal "crime of violence," including offenses which provide for enhanced punishment if committed by means of a dangerous weapon. A "crime of violence," as defined in S. 914 and in Part A of Title X of S. 1762, essentially includes any offense that is a felony and has as an element the use of physical force against person or property or that involves a substantial risk of such force in the course of the offense.

Under current law, the authorized terms of imprisonment are one to ten years for a first conviction, and two to twenty-five years for a second or subsequent conviction. In the case of a first conviction under proposed Section 924(c), the defendant would be sentenced to imprisonment for five years. For a second or subsequent conviction, he would receive a sentence of imprisonment of ten years. In either case, the defendant could not be given a suspended or probationary sentence, nor could any sentence under the revised Subsection by made to run concurrently with that for the predicate crime or any other offense. In addition, the Committee intends that the mandatory sentence under the revised Subsection 924(c) be served prior to the start of the sentence for the underlying or any other offense. For example, a person convicted of armed bank robbery in violation of 18 U.S.C. 2113 (a) and (d) and of using a firearm in its commission would have to serve five years in the case of a first conviction under the Subsection, less only "good time" credit for proper behavior in prison, before his sentence for the conviction under Section 2113 (a) and (d) could start to run. Finally, a person sentenced under the new Subsection 924(c) would not be eligible for parole.

Evidence that the defendant had a firearm in his pocket, but did not display it or refer to it, could nevertheless support a conviction for "carrying" a firearm in furtherance of the crime if from the circumstances or otherwise it could be found that the defendant intended to use the gun if a contingency arose or to make his escape.

As in the Comprehensive Crime Control Act, the requirement in present Section 924(c) that the gun be carried "unlawfully," a fact usually proven by showing that the defendant was in violation of a State or local law, has been eliminated. The "unlawfully" provision was originally added to Section 924(c) because of concern that policemen and persons licensed to carry firearms who committed Federal felonies would be subjected to additional penalties, even where the weapon played no part in the crime.[52] The Committee has concluded that persons who are licensed to carry firearms and abuse that privilege by committing a crime of violence with the weapon are as deserving of punishment as a person whose possession of the gun violates a State or local ordinance. Moreover, the requirement that the firearm's use or carrying be "in relation to" and/or "in furtherance of" the crime would preclude its application in a situation where its presence played no part in the crime.

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[50] These statutes include 18 U.S.C. 111, 112, 113, 2113, 2114, and 2231. Enhancement of sentences varies widely among these sections and the terms called for are generally less than the penalty under sec. 924(c).

[51] S. 914 hearings, supra note 9, at 12-13.

The Committee made several significant changes in the language in Title X, Part D of the Comprehensive Crime Control Act. First, the offense relating to carrying a firearm specifies that such carrying must be "in furtherance of" the crime of violence. This would cover carrying during the actual offense and in any attempt to escape apprehension. It would not cover the situation where a firearm is carried in a pocket and never displayed or referred to in the course of a barroom fight.

The second change from the language in the Comprehensive Crime Control Act provides that no person may be sentenced under the Subsection if he establishes to the satisfaction of the court that the use of the firearm was for the purpose of protecting himself or another from the good faith perception of immediate danger.[53] However, such danger may not include any which is the direct result of the commission of, or attempt to commit a felony by the person whose protection is sought. Thus, an armed bank robber who used a firearm to protect himself from a bank security guard would not be exempt from the mandatory, additional penalties imposed under 18 U.S.C. 924(c), as amended by the Committee.

In addition to the "self-defense" requirements, the court must find that the imposition of mandatory additional penalties under this Subsection would constitute a "severe and substantial miscarriage of justice." Furthermore, the court must make written findings of fact and law with respect to the conditions required for exemption from mandatory penalties.

The purpose of the proviso is to provide the court with some discretion to restrict the imposition of mandatory, additional penalties in certain rare cases where it might prove unjust. Specifically, while a defendant may be unable to meet the burden of proof for establishing a defense of self or others with respect to the underlying crime of violence, the equities of the case may not call for the imposition of penalties other than those relating to that underlying felony. One possible instance of such a situation would be the use of excessive force in self-defense. While conviction of the underlying crime may be warranted, the defendant, unlike one who initiated force, may not be deserving of additional, mandatory penalties. In such a case, the proviso reported by the Committee would grant to the court needed discretion to weigh the equities of the situation and the public good.

Paragraph (3) of Section 104 would amend 18 U.S.C. 924(d), governing forfeiture of firearms involved in a violation of Federal law. During its hearings, the Committee has received considerable evidence of misuse of existing, overly broad powers to confiscate and forfeit firearms. Finally, the change made by the Committee in response to these particular, documented problems should not be construed as a reflection on the propriety of civil action taken by the government in other criminally related instances. For instance, in cases where a collector or dealer was alleged to have sold a small number of firearms improperly—often without illicit intent—enforcing agents confiscated entire collections or inventories. On occasion, such collections were withheld despite the owner's acquittal on all charges, or, in the absence of criminal charges, for over two years after the seizure. Owners who secured the return of such firearms often did so only at considerable legal expense to themselves. Section 104(3), in addition to other improvement discussed above, addresses these problems at several levels.

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[52] See *U.S.* v. *Howard,* 504 F.2d 1281, 1285-1286 (8th cir. 1974).

[53] This exception is not without precedent. In the Criminal Code Reform Act of 1981, the committee approved a similar provision. See S. 1630 and S. Rept. 307 at 891, 97th Cong., 1st Sess. (1981).

First, in cases of actual violations of Chapter 44, seizures are limited to knowing and willful violations, as those distinctions are drawn in the Committee's amendments to 18 U.S.C. 924(a). Thus, no seizures related to Chapter 44 violations are authorized where a criminal state of mind is absent. Second, under current law, seizures are authorized where the firearms are intended to be used, although not actually used, in the commission of the offense. Because of the concern that mere intent to use firearms might occasion improper seizures of an entire collection or inventory based on vague evidence of intent, S. 1030 did not authorize the seizure of firearms intended to be used in crime.[54]

The bill reported by the Committee strikes a balance between the concerns which gave rise to the latter provision in S. 1030, on one hand, and legitimate law enforcement interests, on the other. At the suggestion of the Administration, such seizures are confined to situations where the government can show intent that the firearms were to be criminally used by clear and convincing evidence.[55] This is a more difficult burden of proof than preponderance of the evidence, which applies under current law. Furthermore, the crimes with respect to which weapons are intended to be used are limited to those which are primarily non-regulatory. These are listed in proposed 18 U.S.C. 924(d)(3) as: (1) crimes of violence (as defined in proposed 18 U.S.C. 924(c)(2)); (2) offenses punishable under the Controlled Substances and the Controlled Substances Import and Export Acts; (3) offenses described in 18 U.S.C. 922(a)(1) (engaging in the business of firearms importation, manufacture or dealing without a license), 18 U.S.C. 922(a)(3) (transportation of firearms purchased outside a nonlicensee's state into his state), 18 U.S.C. 922(a)(5) (transfer of firearm by non-licensee to another residing in a different state), 18 U.S.C. 922(b)(3) (certain interstate sales by licensees to nonresidents), but only where the firearm is involved in a pattern of activities which includes an actual violation of one of those paragraphs; (4) an offense under 18 U.S.C. 922(d) (sale of firearm by licensee to prohibited person), where the illicit intent is on the part of the transferor; (5) offenses described in 18 U.S.C. 922(i) (shipment of stolen firearms), 18 U.S.C. 922(j) (receipt or disposition of stolen firearms), 18 U.S.C. 922(l) (unlawful importation of firearms and receipt thereof), 18 U.S.C. 922(n) (shipment or receipt of firearms by certain indicted persons), and 18 U.S.C. 924(b) (shipment or receipt of firearms with intent to commit offense or knowledge that offense will be committed); and (6) Federal offenses involving the exportation of firearms or ammunition. The Committee's amendment therefore generally restricts forfeiture of weapons intended to be used in offenses to clearly criminal and dangerous activities.

18 U.S.C. 924(d)(1), as amended by the Committee, also institutes several procedural safeguards against improper seizure or undue retention of seized

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[54] *S. 10.30 report*, supra note 4, at 23.

[55] S. 914 hearings, supra note 9, at 21, 39-40.

property. Upon acquittal of the owner or possessor, or dismissal of charges against him (other than upon the Government's motion before trial), seized firearms or ammunition must be returned unless it would place the owner, possessor, or the delegates of either in violation of law. In any event, an action for forfeiture must be commenced, if at all, within 120 days of seizure. Beyond this point, the statutory authority for the Government to obtain forfeitures under Chapter 44 is lost.[56] These changes are in response to particular, documented problems in the firearms area and should not be construed as a reflection on the propriety of civil action taken by the Government in other criminally related instances, such as drug cases.

Under proposed 18 U.S.C. 924(d)(2)(A) and (B), reasonable attorney's fees may be awarded to a person where (1) such person successfully brings a suit for return of the firearms or ammunition or (2) the court finds that proceedings instituted under Chapter 44 were without foundation, or were initiated vexatiously, frivolously, or in bad faith. If an individual has in fact been deprived of his property unjustly or has been unfairly forced to defend himself, and established such in court, there is little reason to put the burden of costs upon the just claimant rather than those who have unjustly taken his possessions or forced him to defend himself in an unreasonable action.

Finally, under proposed 18 U.S.C. 924(d)(2)(C), only those firearms particularly and individually identified as used, involved in or, in certain cases, intended to be used in a violation of Chapter 44, regulations issued thereunder, or any other Federal criminal law, may be seized or forfeited. This is both to prevent the issuance of general warrants, leaving it to the executing agents to decide which firearms meet the general criteria of use or involvement, and also to prevent wholesale forfeiture of collections or inventories upon a claim of general intent to use them illegally. These are protections designed to safeguard Fourth Amendment rights. Section 924(d)(2)(C) differs from the bill reported by the Senate in the 97th Congress in that it contains conforming changes to reflect those made in Section 924(d)(1), discussed in more detail above.

Section 105 of the bill reported by the Committee amends 18 U.S.C. 925(c), which prescribes certain administrative procedures peculiar to the Gun Control Act. 18 U.S.C. 925(c) presently empowers the Secretary of the Treasury to grant, upon proper application and investigation, relief from the disability to purchase or possess firearms incurred by persons convicted of a felony. This relief may be granted if it is established to the Secretary's satisfaction that (1) the circumstances surrounding the conviction and the applicant's record and reputation indicate he is unlikely to act in a manner that would endanger the public safety and (2) the granting of relief would not be contrary to the public interest. This is intended to provide a "safety valve" whereby persons whose offenses were technical and nonviolent, or who have subsequently demonstrated their trustworthiness, may obtain relief.

Present law restricts relief to a relatively narrow category of persons convicted of felonies, i.e., those who have been convicted of crimes punishable by imprisonment for a term exceeding one year, as defined in 18 U.S.C. 921(a)(20), other than those involving the use of a firearm or Federal firearms offenses. This could arbitrarily exclude from relief persons who might otherwise be more trustworthy than those eligible, particularly if they have been convicted of technical or unintentional violations. Section 105(1) of the bill reported by the Committee amends 18 U.S.C. 925(c) to make any person prohibited from firearm or ammunition possession, shipment, receipt or transportation eligible to apply for relief. In light of evidence before the Committee that Gun Control Act charges have been abused in the past, with resultant convictions of persons not inclined to engage in any criminal activity, making relief available to such persons is essential. Moreover, the Committee's amendments to 18 U.S.C. 921(a)(20), described in more detail above, will also address the problems that have arisen in this regard by reducing the class of prohibited persons who might need to seek relief under this Subsection.

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[56] The Committee's amendment is intended to reverse current law, as interpreted by the Supreme Court in *U.S. v. One Assortment of 89 Firearms*, 104 S. Ct. 1099 (1984).

Under current practice, a person whose application is denied may appeal to the Federal district court under Section 702 of the Administrative Procedure Act (5 U.S.C. 702). The court's review is limited to the BATF Director's statement of reasons for his decision. That statement need not include "detailed findings of fact," but must inform the court of the grounds of the decision and the "essential facts" on which it was based.[57] Section 105(1)(D) of the bill reported by the Committee would codify in 18 U.S.C. 925(c) a right of appeal to the district court from any denial of relief. In a change from existing practice, it authorizes the scope of review provided under 5 U.S.C. 706 [58] and empowers the court to consider additional evidence in making its findings where a failure to do so would result in a miscarriage of justice. In such a case, the court might in its discretion request the presence of an agent representing the Secretary, and stay the action for a suitable time to permit the Secretary to review his finding in light of the additional evidence. It would then proceed if that evidence did not alter the Secretary's determination.

Finally, Section 105(1) of the bill, as amended by the Committee, clarifies that relief will also apply to the transportation of firearms. Section 105(2) amends 18 U.S.C. 925(d), governing importation of firearms. Under that Section, the Secretary may authorize importation of specified firearms or ammunition, including those which are generally recognized as particularly suitable for or readily adaptable to sporting purposes. The Committee amendment requires the Secretary to authorize the importation of firearms in the listed categories, with a change in Subsection (d)(3) requiring that the firearm be "suitable for or readily adaptable to sporting purposes." It is anticipated that in the vast majority of cases, this will not result in any change in current practices. Finally, the Committee amendment requires the Secretary to permit the conditional importation of firearms to determine whether importation of such firearms will be authorized under the Subsection.

Section 106 of S. 914, as reported, amends 18 U.S.C. 926, which deals with rules and regulations. Section 106 (1) redesignates exisitng Section 926 as Subsection (a) of that Section. Sections 106 (2) and (3) provide that the Secretary shall promulgate only such regulations as are necessary (as opposed to the redundant "reasonably necessary") to carry out the provisions of the Gun Control Act. It also specifically forbids the promulgation of any rules, after the effective date of the Act, which would (1) transfer or record records maintained under the Act at any government-owned or government-controlled facility, or (2) establish any system of firearm, firearm owner, or firearm transaction registration. A further proviso specifies that nothing in the Section can be deemed to expand or restrict the Secretary's authority to inquire into the disposition of firearms pursuant to a criminal investigation. This "tracing" authority is codified in the Committee's amendment and is discussed in more detail above.

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[57] *Kitchens* v. *BATF*, 535 F.2d 1197 (9th cir. 1976).

[58] 5 U.S.C. 706 generally authorizes the court to compel agency action "unlawfully withheld or unreasonably delayed, and to hold unlawful agency actions found to be (1) arbitrary, capricious, or otherwise not in accordance with law; (2) contrary to the Constitution or statute; or (3) unwarranted by the facts.

Section 106(5) creates two new subsections in 18 U.S.C. 926. Proposed Subsection (b) would require ninety days' notice of any new regulations in an effort to codify what should constitute "reasonable notice" under current law. Proposed Subsection (c) precludes the requirement of affidavits for black powder transactions permitted under 18 U.S.C. 845(a)(5).

Section 107 of the bill reported by the Committee amends 18 U.S.C. 927 to add a provision nullifying state and local laws and regulations which have the effect of prohibiting the transportation of a firearm or ammunition in interstate commerce through such state when the firearm is unloaded and not readily accessible. This is intended to prevent local laws, which may ban or restrict firearm ownership, possession or transportation, from being used to harass interstate commerce and travellers. It is anticipated that the firearms being transported will be made inaccessible in a way consistent with the mode of transportation—in a trunk or locked glove compartment in vehicles which have such containers, or in a case or similar receptacle in vehicles which do not.

Section 108 of the bill was added by an amendment in the nature of a substitute offered by Senator Hatch (on behalf of Senator Dole) to an amendment offered by Senator Kennedy during Committee mark-up. It amends Chapter 44 of Title 18 by adding a new Section 929 relating to the use of certain ammunition. That Section is identical to the provision in Title X, Part E of S. 1762, the Comprehensive Crime Control Act of 1984. This provision was developed in response to concerns expressed in recent years about ammunition that will penetrate the type of bullet-resistant vests commonly used by police officers and public officials.

Section 929, as reported by the Committee, would provide a mandatory term of imprisonment of at least five years for using or carrying any handgun loaded with armor-piercing ammunition during and in relation to a crime of violence, as defined in the Committee's proposed amendment to Section 924(c)(2), including a crime of violence which provides for an enhanced punishment if committed by the use of a deadly or dangerous weapon or device.[59] A person sentenced under the proposed Subsection may not be given a suspended sentence or placed on probation. Moreover, he is not eligible for parole. The sentence cannot be served concurrently with any other sentence, including a sentence for the underlying crime of or for a conviction under Section 924(c) for using or carrying the firearm itself in connection with the crime of violence.

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[59] The latter specification is discussed in more detail supra in connection with proposed changes to 18 U.S.C. 924(c).

A "crime of violence" is defined as it is in 18 U.S.C. 924(c), as amended by the Committee. "Armor-piercing ammunition" is defined as ammunition which, if fired from the handgun used or carried in the crime of violence, under the test procedure of the National Institute of Law Enforcement and Criminal Justice Standard for the Ballistics Resistance of Police Body Armor promulgated December, 1978, is determined to be capable of penetrating bullet-resistant apparel or body armor meeting the requirements of Type II A of Standard NILECJ-STD 0101.01 as formulated by the United States Department of Justice and published in December of 1978. This is the most commonly worn type of police body armor. Handgun is defined as "any firearm, including a pistol or revolver, originally designed to be fired by the use of a single hand." Thus, the definition would not include a sawed-off rifle, but would include a pistol or revolver that had been customized by the addition of an extra-long barrel.

In short, the Committee intends that the mandatory punishment for the use of the armor-piercing ammunition under Section 929 be in addition to the mandatory punishment for the use or carrying of the firearm under the amended Section 924(c). Thus, a person who robbed a bank with a handgun loaded with armor-piercing ammunition would, if charged with and convicted of a violation of 18 U.S.C. 924 and 929, be sentenced to a mandatory term of at least ten years—five for carrying the firearm and at least five for the bullets—without parole eligibility, before he began to serve any sentence imposed for a conviction of the underlying bank robbery.

By a vote of 13 to 3, the Committee adopted Senator Dole's mandatory penalties amendment in the nature of a substitute to the original amendment offered by Senator Kennedy. Senator Kennedy's amendment, in addition to containing similar provisions relating to mandatory penalties, would have added Sections 922(o) and 924(e) to Title 18 to make it a Federal felony for a licensed importer, manufacturer, or dealer to import, manufacture or sell "restricted handgun bullets," i.e., those determined by the Secretary of the Treasury to be capable of penetrating body armor when fired from a handgun with a barrel length of five inches or less. The maximum penalties were ten years of imprisonment and/or $10,000.[60]

The Committee declined to adopt that approach because the definition of "restricted handgun bullet" would have criminalized the importation, manufacture, and sale of a large number of bullets currently on the market which are intended to be used for legitimate purposes and not to defeat body armor worn by law enforcement officers. These include certain popular handgun bullets which have long been widely used for legitimate sporting and recreational purposes. The Committee concluded that the most effective way to deal with the problem of armor-piercing bullets at that time would be to use stiff mandatory penalties to discourage the criminal misuse of handguns loaded with bullets which would pierce the most commonly worn type of police body armor. Since the ammunition must be used with a handgun in a crime of violence, the provision would in no way criminalize the legitimate sporting, recreational, or self-defense use of any type of handgun or ammunition. The final vote on the amendment was 14 to 1.[61]

Section 109 of the bill, as reported by the Committee, makes the effective date of the amendments made by the Act 180 days after enactment. The Committee did not include a provision recommended by the Administration which would have provided an alternate effective date with respect to the interstate sales changes made in Section 102(4)(B) of the bill.[62] The 180-day delay in the effective date will adequately fulfill the goal of the Administration's recommendation, i.e., to permit states to respond, if they so desire, to that change.

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[60] These provisions are essentially identical to those of S. 555, 98th Cong., 1st sess. (1983).

[61] Subsequent to the Committee's consideration of this issue on Apr. 12, 1984, the Administration refined the definition of armor-piercing ammunition to ensure that conventional ammunition would not be included. Specifically, it encompassed solid projectiles or projectile cores constructed from specified metals. Certain projectiles, including those determined by the Secretary to be primarily intended for sporting purposes, were excluded.

Because of the refinement in definition, the Administration proposed, in addition to mandatory penalties for possession of such ammunition during a violent felony, restricting the importation and manufacture of armor-piercing ammunition to use by government agencies or for exportation. Furthermore, license fees would be substantially increased. On June 14, 1984, the Administration's proposal was introduced, by request, by Chairman Thurmond, Senator Biden, and 67 original cosponsors, as S. 2766. That bill was reported by the Committee on June 26, 1984.

A new provision based on the suggestion of the Administration, which was not in the bill reported in the 97th Congress, requires the Secretary to publish and provide to all licensees a compilation of the state laws and local ordinances of which licensees are presumed to have knowledge under 18 U.S.C. 922(b)(3)(A), as reported by the Committee. Amendments to those laws and ordinances are required to be published in the Federal Register, revised annually, and furnished to each licensee.

The purpose of this provision is to ensure that licensees who sell to persons from out-of-state, and who are subject to a substantial, potential criminal liability under the Committee's amendment, have reliable and timely information about state and local firearms laws. The Committee envisions that the materials provided to licensees will be similar in form and substance to the compilations currently disseminated by the Bureau of Alcohol, Tobacco and Firearms.[63]

In Section 109, at the suggestions of the Administration, two additional changes were made in the effective date provisions. First, Section 109(2) states that the provisions of Section 103(5)(C) (relating to license application), Section 104(2) (relating to mandatory penalties for using a firearm to commit a felony), Section 105 (relating to relief from disabilities), and Section 107 (relating to nullification of certain state laws) will apply to cases pending on the effective date of the Act. These are changes which involve very strong public policies and should be implemented as soon as possible after enactment.

The second change contains a Congressional recommendation that, in considering applications for pardons with respect to violations which took place prior to the effective date of the Act, the President should consider (1) whether the defendant's conduct would have constituted an offense under the provisions of S. 914, and (2) the purposes and findings of the Act. The purpose of this provision is to attempt to rectify injustices of the past on a case-by-case basis.

TITLE II—AMENDMENTS TO TITLE VII OF THE OMNIBUS CRIME CONTROL AND SAFE STREETS ACT OF 1968

Section 201 of the bill repeals Title VI of the Omnibus Crime Control and Safe Streets Act of 1968 (18 U.S.C. app. 1201-1203). These provisions are merged into similar provisions in 18 U.S.C. 922 and are discussed in more detail supra.

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ADDITIONAL VIEWS OF MESSRS. KENNEDY AND METZENBAUM

After six months of review and debate on S. 914 in the Judiciary Committee, this bill was reported by the Committee—but only after an amendment to maintain existing controls on the interstate sale of concealable handguns was adopted by the Committee.

We support the provisions in the bill to reduce unnecessary restrictions and regulations on the purchase and sale of rifles and shotguns for hunting and sporting purposes. But we continue to be concerned about the inadequacy of current law with respect to handgun control, and we are also concerned about the needless new loopholes that the bill opens in this area.

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[62] S. 914 hearings, supra note 9, at 15, 43.

[63] Bureau of Alcohol, Tobacco and Firearms, U.S. Department of Treasury, State Laws and Published Ordinances: Firearms (1983).

Handgun control is an essential part of effective law enforcement. The ready availability of lethal, concealable handguns undermines the fundamental effort to protect citizens from violent crime. Instead of weakening handgun controls, we should be working to keep handguns from falling into the wrong hands. And we can do so without jeopardizing in any way the legitimate sporting interests of our citizens or their legitimate interest in self-defense.

The toll of handgun deaths is a national disgrace. Each year, handguns are used in more than 10,000 murders in the United States and another 500,000 crimes of violence. A major study conducted by Cox News Service in 1981 found that two out of every three handguns used in murders, rapes, robberies, and muggings have a barrel length of three inches or less. These snub-nosed handguns are the overwhelming weapon of choice by street criminals and assassins.

One of the most effective ways for Congress to carry out its responsibility to protect citizens from violent criminals, killers and psychopaths is to halt the proliferation of handguns. Today, a new handgun is sold every 13 seconds somewhere in America. In a single year, 2.5 million more handguns are added to the national stockpile. By the year 2000, there will be 100 million handguns in circulation in America —enough to arm a third of our population.

We share the basic goal of the sponsors of this bill—to remove unnecessary regulatory burdens on the legitimate purchase of firearms by hunters and others for sporting purposes, and by law-abiding citizens seeking weapons for self-protection.

We should eliminate excessive red-tape and regulations affecting the sale of rifles, shotguns and sporting weapons. But we must not misuse this worthwhile goal as an excuse to weaken the law as it applies to the narrow category of handguns—especially "snubbies" and "Saturday Night Specials"—which have no legitimate sporting purpose and which are often used in crime.

We repeatedly tried to draw this distinction during the Committee's consideration of the bill; Congress can—and should—deal differently with long-guns than it does with handguns. Certainly we should not weaken existing controls on the interstate sale of concealable handguns. We are gratified that the Committee accepted this distinction for the first time and voted to support the Kennedy proposal to maintain existing law on handguns with a barrel length of three inches or less.

But this is only a very small step in the right direction. We have a responsibility to deal more effectively with the abuse of handguns in our society. And there are reasonable steps available, through amendments to this bill on the Senate floor, if we have the will to take them. For example:

We should stop the manufacture and sale of "snubbies," since they have no legitimate sporting or other purpose; at the very least, we should close the gaping loophole in current law that prohibits the importation of fully assembled snubbies but permits the importation of snubbie parts for assembly in the United States;

We should ban "cop killer" bullets;

We should stop the sale of handguns by pawnshops; and

We should enact a reasonable waiting period for the purchase of a handgun, to permit a check of local police records to ensure that the potential purchaser meets the requirements of current law—i.e. that the handgun is not being sold to anyone in the prohibited categories of a convicted felon, a drug addict, or a person with a history of mental illness. Without such a check, the dealer must simply accept their word and, after filling out a form, hand the gun over the counter.

In addition to these points on strengthening existing law, we cannot ignore several provisions in this bill which would unnecessarily weaken existing law.

For example, this bill authorizes licensed dealers to sell at "gun shows" but as drafted the bill uses the words "temporary locations." This is so broad that it would cover far more than "bona fide" gun shows, perhaps allowing dealers to sell on street corners.

The bill also weakens current law on compliance inspections by prohibiting them unless advance warning is given to dealers. It should be possible to prevent harassment of legitimate dealers without giving up all surprise inspections, which are at the heart of so many other federal inspection laws. Why the exception on gun dealers?

This bill also amends the definition of "dealer" to provide an exemption from the Act for sales of firearms from "private collections." Again, if there are abuses in enforcement procedures in this area, a narrower remedy is appropriate that does not invite unscrupulous dealers to evade the law.

In short, we believe we can both strengthen the law and close some of the new loopholes created in this bill without infringing in the slightest upon the rights of any other citizen who wishes to purchase a handgun for sporting purposes or the purpose of self-protection.

We have made a start in the right direction by the amendment adopted in the Committee to preserve current law prohibiting the interstate sale of concealable handguns. We hope that, when debate begins in the full Senate, we will continue that progress by enacting legislation to close the unacceptable loopholes in existing law.

SUPPLEMENTAL VIEWS OF MR. DOLE

The subject of federal gun control legislation has been one of the most chronically controversial and emotionally charged issues with which the Congress has had to wrestle in recent years. In a time of dramatically increasing crime, including crimes of violence committed with guns, repeated calls have been made for more restrictive gun control. At the same time, private ownership of firearms for lawful purposes, including sport, recreation and self-protection, has also increased dramatically. Since 1968, the last time the Federal Gun Control laws were substantially revised, at least 25 million firearms have been sold through legitimate channels of commerce. These guns have been added to those previously held in private hands. Private ownership of all firearms in this country may be somewhere between 150 to 200 million weapons.

The overwhelming majority of these firearms are lawfully owned and used. This ownership is probably unique in the world and represents a precious constitutional right. This right, however, is not unlimited. It is subject to reasonable restraint by law and regulation by the federal government, the states and their political subdivisions. There are federal and state prohibitions on transfer, possession and use of firearms by pesons such as convicted felons who have a high potential for misuse of guns. Although criminal misuse is almost statistically insignificant in contrast to lawful ownership and enjoyment of firearms, this misuse still represents one of this nation's most serious crime control problems.

It is my view that federal gun control legislation should have as its objective the achievement of the proper balance between preservation of a vital constitutional right and a reasonable exercise of police power to deter and punish criminal misuse. The federal law must be carefully crafted so as to regulate effectively lawful interstate commerce in firearms, to proscribe certain criminal misuse of those firearms and to assist state and local enforcement authorities to discharge their public safety functions.

It is with this perspective that the Senator from Kansas has approached the consideration of S. 914.

S. 914

In previous Congresses, the Senator from Kansas has been a co-sponsor of Senator McClure's bill and still remains committed to the principles embodied in that bill. Upon detailed analysis of the McClure bill, however, there were some provisions which needed modification and, in some cases, there were gaps in the bill which needed to be filled. A package of amendments offered in full Committee by Senator Hatch were needed improvements which modified the McClure bill to remove unnecessary restrictions on those who were charged with enforcement of the federal gun control legislation. My understanding is that the Hatch amendment resulted from a series of negotiations between the Administration and interested sporting organizations.

Other areas remained where S. 914 needed improvement to make overdue changes in the 1968 Gun Control Act. This Senator circulated amendments for comment but a consensus of those involved in the legislative process on this bill was that these amendments should be held off for consideration on the Senate floor.

With the changes that have been made by the Committee, this Senator has agreed to co-sponsor the legislation.

Collectors Amendment

The Gun Control Act of 1968 placed certain restrictions and prohibitions on the importation of new and used firearms which do not apply to domestic manufacture or sale of these guns. All newly made handguns of foreign origin must meet the requirements of a "factoring" system devised by the Treasury Department pursuant to the 1968 legislation. Generally speaking, easily concealable handguns cannot be imported unless they meet certain length specifications and satisfy other requirements. In addition, there are prohibitions on importation of military surplus rifles, shotguns and handguns, although these same items can be sold in the United States and are importable if they are commercial or police used or surplus guns.

This Senator has successfully offered amendments, that the Senate has passed twice on other legislation, which would allow importation of firearms having "significant value to collectors" whether new or used. The Treasury Department expressed some concern about the amendment in its original form, so recently the Committee on Finance approved a revised version which accommodated Treasury's concern. These firearms would be importable if they are on the Secretary's list of curios or relics. In the case of handguns, they must be particularly suitable for sporting purposes. This amendment is not a part of S. 914 nor has it been offered by this Senator to legislation pending in the Judiciary Committee.

Amendments to the National Firearms Act

A second area of concern involves Title 2 of the Gun Control Act of 1968.

This legislation contained a comprehensive revision of the National Firearms Act of 1934, the so-called Machine Gun Act. This Act strictly regulates manufacture, distribution, sale, possession and ownership of automatic weapons, machine guns, sawed-off rifles and shotguns, and other destructive devices. Although a title of the Gun Control Act, the National Firearms Act is a part of the Internal Revenue Code since it provides for heavy transfer taxes on these weapons and a system of national registration on them. The 1968 amendments to the National Act were processed by the Senate Judiciary Committee with the concurrence of the Committee on Finance, which, of course, has jurisdiction over the Internal Revenue Code.

S. 914 only contains amendments to the Federal Firearms Act of 1938 (Title 1 of the Gun Control Act of 1968). It is my view that certain amendments, mostly of a technical nature, are necessary to deal with certain problems and the administration of the National Act since it was last revised in 1968. An amendment was prepared for consideration which has the following major provisions:

(1) The 1968 Act provided for a grace period in which any person in possession of an unregistered firearm at the time of the effective date of the law, would have six months to come into compliance by registration and payment of appropriate taxes. The amendment provides for a permanent "grace" period allowing any individual to come forward so long as there was no pending federal or state criminal investigation or action at the time of registration. This is to encourage individuals who possess these dangerous weapons to come into full compliance with the law.

(2) A companion provision would be added to authorize individuals who acquire National Act weapons by reason of inheritance to register them without civil or criminal liability and without payment of further transfer taxes.

(3) The definition of destructive devices would be amended to include recent advances in the state of military weaponry including several kinds of high energy devices which are under intensive research and development by the military and others at the present time.

(4) Section 6103 of the Internal Revenue Code would be amended to exclude from the definition of "tax return information" any information required to be submitted to the Bureau of Alcohol, Tobacco, and Firearms or a successor agency under provisions of the National Firearms Act.

(5) Several changes would be made to cover weapons which can be readily converted to an automatic mode by the simple modification of or addition of a single part in addition to current requirements which include a "combination of parts" for the conversion. The change would also cover "kits" or parts to be used in the conversion as well as parts or major parts to be used in assembling silencers or mufflers for any firearm.

These changes retain the current regulatory structure of the National Firearms Act. It does not deal with sporting firearms.

The Treasury Department was asked to comment on this amendment. Its views appear on pages 62 and 63 of the October 4, 1983 Judiciary Committee hearing record. The Treasury views express a concern about the permanent amnesty provision of the amendment which would allow persons in possession of unregistered National Act weapons to register them so long as they were not under criminal investigations or indictment for violation of the National Act.

It is difficult to understand the Treasury objection to this provision. There was a six month amnesty provision as a feature of the 1968 update (not 30 days as indicated in the Treasury views). During that time, with little publicity, more than 60 thousand National Act weapons were registered. This meant that federal enforcement authorities became aware of the existence of these potentially dangerous weapons as well as the identity of their possessors. There were other provisions which dealt with the defects of the entire system on National Act registration—not just those weapons registered during the amnesty period. Subsequently, the Supreme Court upheld the validity of the 1968 amendments, including the amnesty. It seems to me that the arguments which Treasury pose against my current amendment would also apply equally to the provisions of the existing law. The only difficulty is that the Supreme Court has already spoken on the subject and upheld the 1968 Act.

If it would remove Treasury's objection, I would be willing to modify my amendment to make a time certain for the amnesty provision—perhaps limit it to one year. It is important for those who have these dangerous weapons and who are otherwise law abiding to come forward and make their existence known to the federal authorities.

In any event, I am willing to discuss the matter with Treasury and work an accommodation. In fact, my staff and I attempted to do this last fall, but without significant results.

To facilitate Judiciary Committee consideration of S. 914, this Senator agreed not to pursue the National Act amendment in Committee. However, it may be offered when S. 914 is considered on the Senate floor.

ARMOR-PIERCING AMENDMENT

Recently, I have joined with the Administration, Chairman Thurmond, the National Rifle Association, and other members of the Judiciary Committee to reach this very important agreement on the provisions of the legislation. I have been active on this issue since 1982, when the dangers inherent in the widespread availability of armor-piercing ammunition first came to my attention. In the 97th Congress, I sponsored legislation that would have required ammunition dealers to record every sale of this ammunition. That proposal was eventually incorporated into Treasury regulations.

During Senate Judiciary Committee consideration of S. 914, I successfully offered an amendment which provides for strict minimum mandatory penalties for persons utilizing armor-piercing ammunition in the commission of federal offenses. The language of this amendment is identical to the Administration-sponsored provisions of the omnibus crime legislation (S. 1872) which passed the Senate earlier this year.

Since the Law Enforcement Assistance Administration supported the development of soft body armor for police use in 1973, more than 400 officers' lives have been saved. According to officials at the National Institute of Justice, tests have demonstrated the vulnerability of that soft-body armor to certain kinds of ammunition. Although there has been no widespread use of this ammunition by the criminal element as yet, the potential availability of the ammunition and its unregulated manufacture is an invitation for trouble. This legislation will shut the door of availability of the ammunition to the criminal element by prohibiting its importation and restricting manufacture and sale of the bullets in this country to that which is needed for legitimate law enforcement purposes.

A word of caution is in order. There are problems of definition with this ammunition. We do not want to throw the baby out with the proverbial bath water. Ammunition is in wide-spread use for long-guns that could fit within proposed definitions. We must carefully consider these potential problems and fashion appropriate solutions.

Waiting Period

In the 97th Congress, during consideration of S. 1030, the Judiciary Committee adopted a compromise amendment offered by this Senator which would have required persons attempting to purchase handguns over the counter from federally licensed firearms dealers to wait 14 days after date of initial payment before the handgun can be delivered to the buyer.

The purpose of this amendment was to provide for a "cooling off period" which would act as a deterrent to individuals who, in a fit of passion, might acquire a handgun for the purpose of commiting a violent crime. An opportunity would also be afforded for dealer's records to be available during the cooling off period for those enforcement authorities who are authorized by federal or state law, or local published ordinance to inspect the dealer's records to insure compliance.

The amendment was intended to complement the waiting period required in Section 922(c) of Title 18 of the United States Code. Since the enactment of the Gun Control Act of 1968, a 7-day waiting period has been required before a dealer could ship a firearm in intrastate commerce to a purchaser. However, unlike section 922(c) this amendment would not require notification of the purchaser's chief law enforcement officer.

In mail order transactions the dealer's records are not readily available or accessible to the purchaser's enforcement officials. However, in over-the-counter sales, records are available for inspection by the local chief or his representative. It would be unwise and impractical for local police departments, as a matter of Federal law, to amass files of over-the-counter transactions. When valid requirements exist for tracing of guns that have been criminally misused, the records of the retail sale are available for inspection at the dealer's place of business. To require more would mean the establishment of expensive and redundant record keeping systems by local enforcement officials.

The original amendment offered by Senator Kennedy, in addition to imposing a 21 day waiting period, would have required a name search of the criminal history records of the Federal Bureau of Investigation to determine whether the purchaser would be prohibited from purchasing, transporting, receiving or possessing firearms. This approach had substantial difficulties.

The Committee rejected the Kennedy approach and adopted my substitute.

This year, Senator Kennedy reoffered the substitute that the Committee had previously approved. However, because of continuing criticism of interested sporting groups as well as other provisions of the Hatch substitute which improve capabilities of law enforcement officials to trace the ownership chain of guns that have been criminally misused, the Committee rejected the "cooling off" amendment.

While the "cooling off" substitute is preferable to the original waiting period amendment, substantial questions remain as to the advisability of adapting an approach which would impose additional paper work burdens on dealers and purchasers as a matter of federal law. Many states now have waiting period and background check provisions in their gun control laws. It may well be that this is sufficient.

Other Amendments

Several other amendments were informally circulated by my staff for possible consideration by the Judiciary Committee. This package included proposals to reinstate interstate mail-order sales subject to a cooling-off period and an affidavit, decriminalization of technical or bookkeeping offenses (rather than the downgrading from felonies to misdemeanors in S. 914) and the National Firearms Act amendment which has been described separately. In order to expedite committee consideration of S. 914, I agreed to withhold this package until the matter comes up for consideration on the Senate floor.

CONCLUSION

S. 914 is the first major revision of the Federal gun control laws since 1968. It will go a long way towards correcting defects and shortcomings of this controversial legislation. With additional amendments such as those suggested in these views, further improvements can be made in the existing law from the standpoint of law abiding gun owners, dealers and manufacturers as well as law enforcement authorities.

The Congress has a sworn duty to protect and defend the Constitution and the precious rights bestowed by it on our citizens. It also must face serious problems of violent crime and provide workable tools to enforcement authorities to deal with those who criminally misuse guns or who recklessly make it possible for others to do so. Gun control legislation is not a panacea for eliminating violent crime from our society. But it can be a significant factor to assist in prevention and control of gun crimes. The Congress must strive to achieve a balance of these vital interests.

House Report*
No. 99-495
99th Congress

FEDERAL FIREARMS LAW REFORM ACT OF 1986

March 14, 1986

Mr. Hughes from the Committee on the Judiciary, submitted the following report to accompany H.R. 4332.

The Committee on the Judiciary to whom was referred the bill (H.R. 4332) to amend chapter 44 (relating to firearms) of title 18, United States Code, and for other purposes, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

The amendment is set forth in the appendix at the end of the report.

Purpose of the Legislation

H.R. 4332 is designed to relieve the nation's sportsmen and firearms owners and dealers from unnecessary burdens under the Gun Control Act of 1968, to strengthen the Gun Control Act of 1968 to enhance the ability of law enforcement to fight violent crime and narcotics trafficking, and to improve administration of the Act.

Overview of the Legislation

BENEFITS FOR SPORTSMEN

Permits interstate sale of rifles and shotguns if the sale is made face to face between buyer and seller and complies with laws of both states.

Assures the rights of individuals to travel in and between states with a secured, unloaded, not readily accessible rifle or shotgun for the purposes of participating in legal sporting activities or for changing their residence.

Eliminates recordkeeping in the sale of ammunition in quantities of less than 1,000 rounds except for armor-piercing ammunition.

Limits the forfeiture of firearms to only those involved in or intended to be involved in felony violations of the law.

Improves the ability of deserving members of the public to petition the Secretary to obtain relief from the disabilities of the Gun Control Act.

BENEFITS FOR LAW ENFORCEMENT

Provides an important new weapon against narcotics traffickers by mandating that a person who uses or carries a firearm during and in relation to a drug trafficking crime shall be subject to a mandatory prison term of five years.

Provides a mandatory prison term of ten years for using or carrying a machine gun during and in relation to a crime of violence or a drug trafficking offense, and a mandatory twenty years for any subsequent offense.

Bans the future sale of silencers and silencer kits.

Provides for notification of law enforcement authorities of a handgun purchase to permit a check of records of criminal conviction or other disqualification of the purchaser. There is no waiting period.

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* H. Rept. No. 99-495 to accompany H.R. 4332, which passed House as S.49 with amendments. No Conference Reports.

Controls all parts designed or intended to be used for converting weapons into machine guns.

Makes it a crime for any non-licensee to transfer a firearm to another person knowing that such person is unqualified.

Modernizes the prohibition on receiving firearms by a person who is an addict to a controlled substance.

Enacts the current regulation requiring reporting multiple handgun sales.

Clarifies the law by combining in one section all of the offenses related *to* sale of firearms to unqualified persons, and the offenses of receipt, possession and transport of firearms by unqualified persons.

Permits the Secretary of the Treasury to consider any state law disqualifications when issuing licenses.

Bans the importation of key components of "Saturday night specials."

Provides an additional weapon against narcotics traffickers by mandating that a person who uses or carries a firearm loaded with armor-piercing ammunition during and in relation to a drug trafficking crime shall be subject to a mandatory prison term of five years.

BENEFITS FOR GUN DEALERS

Requires proof of a knowing state of mind for felony violations.

Reduces recordkeeping offenses to a misdemeanor.

Permits sales at a gun show by a licensee.

Limits information required on license applications to information necessary to determine eligibility for licensing.

Limits compliance inspections to 3 per 18 month period unless personally approved by the Secretary or Director of BATF.

Gives the Secretary a sanction of license suspension to punish less serious violations of the Gun Control Act.

HISTORY OF THE LEGISLATION

There has been substantial concern since 1968 that the Gun Control Act had serious omissions that limited its ability to keep firearms out of the hands of criminals. Others have voiced concerns about the impact of enforcement of the act upon sportsmen. In each Congress since 1968 legislation has been introduced both to substantially strengthen the Act or to repeal or lessen its requirements.

In the 94th Congress the Subcommittee on Crime held hearings on close to 100 bills pending in the subcommittee that ranged from repeal of the 1968 Gun Control Act to prohibiting most private ownership of handguns, in eight cities around the nation taking testimony on 24 days totalling some 100 hours from 220 witnesses.[1] (Mr. Hughes, chairman of the Subcommittee on Crime, was a member of the Subcommittee in the 94th Congress.) The Judiciary Committee favorably reported the bill, H.R. 11193, but no action was taken on it in the House of Representatives.

During the 1970s it was asserted by firearms owners and dealers that a number of the requirements of the act are onerous and do not serve legitimate law enforcement purposes. It has also been asserted that enforcement of the Gun Control Act had been overzealous.

In the 96th Congress hearings were held to explore those issues.[2] Representative Harold Volkmer introduced H.R. 5225 to address those concerns (which was the precursor of H.R. 945 and S. 49 discussed below).

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[1] Hearings before the Subcommittee on Crime of the House Committee on the Judiciary on Firearms Legislation. (94th Cong. 2d sess., Feb. 18, 20, 27, March 5, 6, 13, 26, April 9, 14, 15, May 14, June 9, 10, 16, 23, July 17, 21, 23, 24, 25, September 24, October 1 and 9, 1985) Serial No. 11.

[2] Hearings before the Subcommittee on the Constitution of the Senate Judiciary Committee on Gun Control and Constitutional Rights, 96th Cong. 2d sess. and Hearings of the Senate Committee on Appropriations on Oversight of the Bureau of Alcohol, Tobacco and Firearms, 96th Cong. 2d sess.

Representative Peter W. Rodino, Jr., Chairman of the Committee on the Judiciary Committee, introduced the Handgun Crime Control Act of 1979, H.R. 5823, on November 7, 1979. The bill would have banned the manufacture, importation, assembly or sale of "Saturday night specials", required a 21 day waiting period before the purchase of handguns for FBI and local police record checks for disqualifications, prohibited the purchase of more than 2 handguns per year without approval by the U.S. Attorney General, prohibited sales of handguns by pawnshops, required reporting of the loss or theft of a handgun, raised license fees for handgun dealers to $500 per year and for handgun manufacturers to $5000 per year, and transferred firearms law enforcement from the Treasury Department to the Justice Department.

In the 97th Congress, Rep. Harold Volkmer reintroduced the legislation as H.R. 3300, and Senator James McClure introduced S. 1030, a companion bill. S. 1030 was the subject of three days of hearings lasting a total of 6½ hours.[3] After four days of mark up it was reported on April 21, 1982 (S. Rep. 476 (97th Cong. 2d sess.) but was not brought to the Senate for consideration. Chairman Peter W. Rodino, Jr. reintroduced his legislation as H.R. 3200.

In the 98th Congress, Rep. Volkmer reintroduced his legislation as H.R. 2420. senator McClure reintroduced his as S. 914. the Senate Judiciary Committee held a day of hearings on October 4, 1983. That Committee met on four occasions between November 17, 1983 and May 10, 1984 to mark up S. 914. It was finally reported on May 10, 1984 (S. Rep. 98-583). The bill was never brought to the Senate floor. Chairman Rodino reintroduced his legislation to control handguns as H.R. 1543.

At the beginning of the 99th Congress, Rep. Volkmer reintroduced his legislation with a number of amendments, as H.R. 945. Senator McClure reintroduced his legislation, S. 49, with a number of amendments to the Committee-reported bill, and omitting a major provision of the Committee-reported bill, a prohibition on interstate sale of concealable handguns. S. 49 was placed on the Senate Calendar and was not referred to Committee. No hearings were held nor was a report issued by the Senate Judiciary Committee. The bill was debated, amended and passed by the Senate on July 9, 1985. Chairman Rodino reintroduced his legislation to control handguns as H.R. 1442.

On August 1, 1985 Chairman Peter W. Rodino, Jr. introduced a new bill, H.R. 3155, the Racketeer Weapons and Violent Crimes Control Act of 1985.

H.R. 3155 provided a 15 day waiting period to allow a record check of prospective handgun purchasers to determine if there is a criminal conviction, adjudication of mental incompetence or other disqualifying circumstance.

Second, it prohibited the transfer and possession of machine guns, used by racketeers and drug traffickers for intimidation, murder and protection of drugs and the proceeds of crime. The bill allowed possessers of lawfully registered machine guns to continue their legal possession. The bill enabled a person to dispose of an unwanted legally registered machine gun by permitting the Secretary to buy a machine gun from such person.

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[3] Hearings before the Senate Committee on the Judiciary on S. 1030, a bill to protect firearms owners' constitutional rights, civil liberties and right of privacy. (97 Cong. 1st and 2d sess., December 9 and 11, 1981; and February 8, 1982, Serial No. J-97-87.)

Third, it prohibited the transfer and possession of silencers, used in assassinations and contract murders, in the same manner as the section on machine guns.

Fourth, the bill allowed the Secretary to consider whether applicable State law would bar a prospective licensee from any conduct required to carry out the business of the Federal licensee.

Fifth, the bill closed a number of loopholes concerning possession of firearms by illegal users of drugs.

Sixth, the bill provided regulatory reforms that the NRA and the nation's gun owners, sportsmen, and licensed firearms dealers have long desired which will not compromise BATF's law enforcement capabilities.

> (a) The bill allowed licensed dealers to sell firearms at gunshows.
>
> (b) It eliminated record keeping requirements for the sale of ammunition, except for large quantities, and eliminates record keeping requirements for transfers of curios between licensed collectors.
>
> (c) It provided the Secretary an alternative penalty in a case of violation of the regulations of the GCA of license suspension, an alternative to the only penalty currently available, license revocation.
>
> (d) The bill expanded the class of persons eligible for relief from the disabilities imposed under the Act. It benefits persons who had been convicted of a crime or who had once been adjudicated mentally incompetent, have been subsequently determined to have reformed or adjudicated as restored to mental competence.

The bill raised the annual license fees of licensed dealers, pawnbrokers, manufacturers and importers from $10, $25, $50 and $50 per year, respectively, to $200 per year. A fund from the license fees received under the GCA would be created to be used for "grants . . . to State and local governmental agencies for the purposes of providing assistance in enforcing this chapter or the operation of firearm safety program operated under State or local law."

SUBCOMMITTEE HEARINGS

In September, 1985, the Subcommittee on Crime announced hearings on all the firearms legislation pending before the Subcommittee. Hearings were held in New York City (October 28, 1985). San Francisco (November 9, 1985) and Washington, D.C. (October 30, 1985, Febraury 19, 1986 and February 27, 1986). Testimony was taken from some 75 witnesses from 13 states. The hearings lasted a total of some 25 hours. Numerous letters and submissions were also received.

Among the witnesses from whom the Subcommittee received testimony or prepared statements were the following:

Members of Congress: Rep. Bill Green, Fifteenth Congressional District, New York; Rep. Tommy F. Robinson, Second Congressional District, Arkansas; Rep. G. William Whitehurst, Second Congressional District, Virginia; Rep. Marty Russo, Third Congressional District, Illinois; Rep. Harold Volkmer, Ninth Congressional District, Missouri; Rep. Robert G. Torricelli, Ninth Congressional District, New Jersey; Rep. James A. Traficant, Jr. Seventeenth Congressional District, Ohio, and Senator James A. McClure, Idaho.

Public Officials: Thomas H. Cooke, Jr., Mayor, East Orange, New Jersey, Chairman, Advisory Board of the U.S. Conference of Mayors and President, National Institute of Policing; Ken Eikenberry, Attorney General of the State of Washington, Olympia, Washington; Arlo Smith, District Attorney for the City and County of San Francisco; Richard Iglehart, Chief Assistant District Attorney, Alameda County, Oakland, California.

Police Officials, Officers and Representatives of Law Enforcement Organizations: Benjamin Ward, Police Commissioner, City of New York; Colonel Clinton Pagano, Superintendent, New Jersey State Police; Cornelius Behan, Chief of Police, Baltimore County, Maryland Police Department, President, Police Executive Research Forum; Richard Boyd, National President, Fraternal Order of Police; Sergeant Lou Parisi, President, New Jersey Sergeants Association; John J. Norton, Director of Public Safety, Pittsburgh, Pennsylvania, and President, International Association of Chiefs of Police, on behalf of the IACP; Joseph D. McNamara, Chief of Police, San Jose, California; Sergeant Armand Tiano, Immediate Past President, Santa Clara County Deputy Sheriffs Association and Recording Secretary, National Association of Police Organizations, on behalf of NAPO: Lyman Shaffer, former Special-Agent-in-in-Charge, Firearms Enforcement Branch, Bureau of Alcohol, Tobacco and Firearms, U.S. Department of the Treasury, San Francisco, California; Detective Senior Trooper David M. Codding, District Officer, Oregon State Police Association, Eugene, Oregon; John D. Ambrose, Legislative Chairman, California Association of Highway Patrolmen, Fairfield, California; Michael R. Mantell, Ph. D., Chief Psychologist, San Diego Police Department, and Assistant Clinical Professor, Department of Psychology, U.C.S.D. Medical School; President, National Police Psychology Association (a section of the American Psychological Association), San Diego, California; Hubert Williams, President, The Police Foundation, Washington, D.C.; Marty M. Tapscott, President, National Organization of Black Law Enforcement Executives and Assistant Chief of Police, Metropolitan Police Department, Washington, D.C.; Susan Keegan, Legislative Director, National Sheriffs' Association, Alexandria, Virginia, accompanied by Sheriff John Duffy, San Diego County, California, Chairman, Law and Legislation Committee, National Sheriffs' Association; Edward L. Murphy, Legislative Counsel, International Brotherhood of Police Officers, AFL-CIO, Washington, D.C.; Robert E. Van Etten, President, Federal Law Enforcement Officers' Association (FLEOA) accompanied by Tom W. Doyle, executive Vice President, FLEOA; Sterling Epps, Co-Chairman, Legislative Committee, FLEOA; and Kathleen P. Solerwitz, General Counsel, FLEOA

Survivors and Victims of Firearms Violence: Sarah Brady, Arlington, Virginia; Larry Lowenstein, New York, New York; Ronald Bielicki, Watertown, Massachusetts; Anthony Palomares, Thousand Oaks, California; and Nelson "Pete" Shields, Chairman, Handgun Control Inc., Washington, D.C.

Religious Organizations: Rabbi Gary Bretton-Granatoor, Union of American Hebrew Congregations; Reverend Kathy Young, Director, Presbyterian Criminal Justice Program, Presbyterian Church (U.S.A.); Reverend Jack E. Stouffer, Assistant to the Bishop of the Metropolitan New York Synod, Lutheran Church in America; Sam Rabinove, Legal Director, American Jewish Committee; Harold Massey, Program Coordinator, General Board of Church and Society, United Methodist Church; The Honorable Leland Lazarus, Judge, Superior Court of the State of California for the City and County of San Francisco (Retired), and Judge, First District Court of Appeals for Northern California (by designation) on behalf of the American Jewish Congress, San Francisco, California

Medical and Professional Associations: Joseph Greensher, M.D., Chairman, Committee on Accident and

Poison Prevention, American Academy of Pediatrics, Mineola, New York; Richard L. Stennes, M.D., F.A.C.E.P., President, American College of Emergency Physicians; Garen Wintemute, M.D., M.P.H., Assistant Professor, Department of Family Practice, University of California—Davis Medical Center, Sacramento, California; and the Honorable Sylvia Bacon, Judge, Superior Court of the District of Columbia, on behalf of the American Bar Association

Firearms Owners Organizations: Neal Knox, Firearms Hard Corps, Silver Spring, Maryland; Lawrence D. Pratt, Executive Director, Gun Owners of America, Falls Church, Virginia; John Snyder, Citizens Committee for the Right to Keep and Bear Arms, Washington, D.C.; J. Warren Cassidy, Executive Director, Institute for Legislative Action, National Rifle Association of America, Washington, D.C. accompanied by Richard Gardiner; Counsel

Hunters and Sportsmens Organizations: Jerry Preiser, President, Federation of New York State Rifle and Pistol Clubs, Great Neck, New York; David I. Caplan, Voluntary Counsel, Federation of New York State Rifle and Pistol Clubs, New York, New York; Barbara Ruhe, Board of Directors, Connecticut Sportsmens Alliance, Hartford, Connecticut; Cecil Cohen, Legislative Director, New York State Rifle and Pistol Association, Margaretville, New York; Fielding Greaves, Lt. Col. (Ret., U.S. Army), Sportsmens Committee on Political Education, San Rafael, California; W. Hunt Conrad, Publisher, Royal Coachman, San Francisco, California; Robert E. Hunter, Jr., Secretary, Responsible Gun Owners, San Francisco, California; and Mr. Robert F. MacKinnon, Middlesex, New Jersey, on behalf of the Coalition of New Jersey Sportsmen

Other public witnesses: Suzanne Taylor Moore, Vancouver, Washington; Don Kates, Attorney at Law, San Francisco, California; Dolf L. Goldsmith, San Antonio, Texas; Mr. David J. Steinberg, Acting Chairman, National Council for a Responsible Firearms Policy, Inc., Alexandria, Virginia; Mr. Roy Innis, National Chairman, The Congress of Racial Equality, New York, New York

Administration: Edward T. Stevenson, Deputy Assistant Secretary, Enforcement and Operations, U.S. Treasury Department; Stephen E. Higgins, Director, Bureau of Alcohol, Tobacco and Firearms, U.S. Treasury Department, accompanied by Jack Patterson, Deputy General Counsel, BATF

The Subcommittee, in the course of its hearings, uncovered numerous problems with the approaches that S. 49 and H.R. 945 took to solving the problems that they were attempting to address. (See discussion below.) At every hearing law enforcement officers and representatives of law enforcement organizations discussed problems they would face if either S. 49 or H.R. 945 were enacted, and the need for more effective protection of law enforcement officers from the proliferation of machine guns and high-powered "assault-type" weapons that are increasingly being used by criminals.

PROBLEM AREAS IN H.R. 945 AND S. 49

The Subcommittee on Crime uncovered the following problem areas with H.R. 945 and S. 49.

Preemption of state law—transportation of a firearm

S. 49: This provision had the potential to undermine state law enforcement authority significantly. This provision entitles persons who are not disqualified from receiving weapons under the Gun Control Act of 1968 (GCA) to—

> transport an unloaded, not readily accessible firearm in interstate commerce" notwithstanding any provision of state or local law. (S. 49, sec. 107, page 31, lines 12-18)

Interstate commerce is an extremely broad term. One does not have to cross a state line to be "in interstate commerce." It could create a Federal defense to state and local prosecutions for unlawfully carrying a firearm. It is unclear how long a person remains in interstate commerce after entering interstate commerce. The provision could even exempt the residents of a State from that State's law when it is shown, as is easily the case, that the person was "in interstate commerce."

H.R., 945: The approach in H.R. 945 is even broader than in S. 49.

> Any provision of any legislation enacted, or any rule or regulation promulgated, by any State or political subdivision which prohibits or *has the effect of prohibiting* the transportation of a firearm or ammunition in interstate commerce through such State or political subdivision, when such firearm is unloaded and not readily accessible, shall be null and void. (H.R. 945, sec. 107, page 20, lines 9-18, emphasis added.)

Among other effects, this provision could have the effect of invalidating State laws prohibiting felons or mental incompetents from possessing firearms.

Immunity from prosecution

S. 49 and H.R. 945 provide that if any crime is uncovered in the course of a regular inspection of a Federal firearms licensee, "no criminal charges shall be brought against the licensee except for willful violation of the recordkeeping requirements" or for sales or dispositions of firearms in violation of 18 U.S.C. 922(d). This provision creates immunity for prosecution for all crimes uncovered in such an inspection. (S. 49, sec. 103(6), page 15, lines 9-13; H.R. 945, sec. 103(7), page 14, lines 18-21)

Interstate sale of firearms

Permits over-the-counter sales of firearms (including handguns) to out-of-state residents (S. 49, sec. 102(3) and (4), pages 6-7, lines 23-23; H.R. 945, sec. 102(4), pages 7-8, lines 22-14). Licensees would be required to fully comply with the state and local laws applicable to the place of sale and the place of residence of the purchaser. However violations of this requirement would only be punishable if they were "willful." (S. 49, sec. 104(1), page 22, line 14; H.R. 945 sec. 104(1), page 16, line 11). Willful violations would be more difficult to prove than the usual "knowing" standard, particularly in reference to the laws of various states. Sales which do not fully comply with applicable state and local law would violate Federal law but if the failure was due to a mistake of law or fact or due to negligence on the part of the licensee, the violation of the law most likely would not be punishable. Many witnesses wondered how licensees will be able to familiarize themselves with the often complex laws of other states and jurisdictions. A State could not have any ability to prosecute dealers whose sales are made out of State and which violate that State's law—the burden of such enforcement would be solely upon the Federal government.

Many counties have their own laws regarding the purchase of firearms. Since most common forms of identification do not indicate the county in which a person lives, it may be impossible for firearms dealers to know if a county ordinance applies to the sale.[4]

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[4] See "State Laws and Published Ordinances—Firearms," U.S. Department of the Treasury, Bureau of Alcohol, Tobacco and Firearms, 16th Edition, December 1984.

To guide Federal licensees, BATF now publishes an annual compilation of State and local firearms laws.[5] On December 18, 1985 the Treasury Department transmitted proposed legislation to "eliminate the requirement for the annual publication of ordinances concerning firearms laws." (Executive Communication 2419). The explanation of this proposed measure by the General Counsel of the Department of the Treasury is that an annual publication "is considered of little value to the licensee because local ordinances change frequently between publications." This illustrates some of the limitations of a provision that interstate sales may be made if they are in compliance with the law of place of residence of an out of state purchaser.

Weakening current mandatory penalty for using or carrying a firearm in the commission of a crime of violence (S. 49 only)

The current mandatory prison term for the use of carrying of a firearm, during and in relation to any federal crime of violence , is five years without probation or parole (18 U.S.C. 924(c), P.L. 98-473, (section 1005(a)), October 12, 1984.

18 U.S.C. 924(c) is only triggered if the use or carrying of the firearm is "during and in relation" to an underlying crime of violence. To successfully prosecute, proof of the defendant's commission of the crime of violence is necessary.

S. 49 *adds* an unnecessary element to the offense that the carrying be *"in furtherance of any such crime of violence."* (S. 49, sec. 104(2), page 23, line 14). Proof of this element would involve additional analysis of the defendant's conduct, the circumstances of the violent crime and evidence of the defendant's state of mind. It would be a substantial burden on the prosecution and is unnecessary to prevent injustice.

S. 49 also contains a proviso that evidently intends to create a defense of "self-defense," (S. 49, sec. 104(2), page 24, lines 10-21). Essentially this defense would apply to the criminal who armed himself in anticipation of "perceived immediate danger" from another criminal similarly armed, or that he might be arrested by a police officer "unlawfully".

The defense does not follow the Federal rule of self-defense which follows the Common Law—that the belief of the defender must be *reasonable* under the circumstances as they appear at the moment.[6] It appears that this formulation may create, for the first time in Federal law, a statutory right to use force to resist an unlawful arrest. The defense fails to address the most common problems in the law of self-defense such as cases of mutual combat, cases in which the defender initiated the assault but then gave up the attack and retreated, and cases in which the reasonable belief of the defender was in error.

Proponents of the self-defense amendment point out that the defense is not available to one protecting himself "from the danger which was the direct result of the commission of or attempt to commit a felony." They argue that a felon who *uses* a gun in the commission of a felony or in a shoot out with police while fleeing cannot therefore claim self-defense, since he is protecting himself from a danger that was the direct result of the felony.

While this reasoning may rule out a successful self-defense claim in most situations in which the *use* branch of the offense forms the basis of the mandatory penalty prosecution, it would not have the same weight in the case of prosecution for *carrying* a firearm during the commission of a felony. Indeed, the *"carrying"* branch of the offense might be decimated, in that the felon could claim that he was only carrying the weapon for defense against other felons, and cite the fact that he did not actually *use* the weapon as proof of his claim. For example, a drug trafficker, if charged with carrying a firearm under 18 U.S.C. 924(c) in connection with drug trafficking, might be able to reasonably sustain a claim that it was carried for protection against rival traffickers.

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[5] *Ibid.*

[6] S. 1030 and H.R. 3300 (97th Congress) both correctly defined the defense in terms of a "reasonably" perceived immediate danger. H.R. 2420 (98th Congress) eliminated any reference to self-defense in this section, evidently relying upon the Common Law rule. H.R. 945 does not amend 18 U.S.C. 924(c) and thus it appears that Rep. Volkmer is satisfied with the Common Law rule.

Although the provision, section 924(c) of title 18, U.S.C., is frequently referred to as a penalty enhancement provision it is in reality a separate offense from crimes of violence such as assault with a dangerous weapon.[7] It is inconsistent to provide a statutory defense for 924(c) and not for other crimes. This defense could result in prosecutors avoiding the use of 924(c). Eliminating the need to elect between 924(c) in 1984.

Making Prosecutions of GCA Violations More Difficult

Requires proof of "willfulness" to convict for many GCA violations (S. 49, sec. 104(1); H.R. 945, sec. 104(1)). Case law interpreting the criminal provisions of the GCA have required that the government prove that the defendant's conduct was knowing, but not that the defendant knew that his conduct was in violation of the law.[8] The criminal law traditionally does not require proof that the defendant knew that his conduct was in violation of the law.[9]

It appears that the intent of the authors of the "willfulness" requirement of S. 49/H.R. 945 is that the prosecution have to prove that the defendant knew the details of the law, understood that his conduct would violate the law, and intentionally set out to violate the law. This would constitute an almost impossible, and almost unprecedented burden on the prosecution. Proponents of the willfulness standard argue that the offenses for which the standard would apply are mere regulatory offenses, for which a conscious and specific intent to violate the law should be required. However, a person violating a city's vehicular speed limit cannot successfully assert that he had not read the city ordinance nor seen a posted speed limit; a toxic waste dumper cannot escape prosecution by claiming he had not kept up on the environmental protection laws; a money launderer cannot continue to engage in the business of servicing drug traffickers and organized crime by defying the government to prove that he knew that federal law requires that large cash transactions at financial institutions must be reported to the Treasury Department. The Committee believes that, similar to these examples, a person who engages in the business of selling hand grenades or machine guns should not escape prosecution solely on the grounds that the government cannot produce witnesses to whom the defendant admitted knowledge that such conduct requires a federal license, and a determination to violate that law.

Determining who needs a license

A feature with major impact is the change in defining who is required to obtain a license as a dealer, manufacturer or importer. This is an area that has many who use firearms very upset. Persons who are "engaged in the business" of manufacturing, importing, or buying and selling firearms are required to obtain a license.

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[7] *Simpson* v. *United States*, 435 U.S. 6, 10 (1978).

[8] *United States* v. *Freed*, 401 U.S. 601, 607-610 (1971).

[9] *United States* v. *Currier*, 621 F.2d 7, 9-10 (1st Cir. 1980).

S. 49 and H.R. 945 define "engaged in the business" in terms of "the principal objective of livelihood and profit" whose underlying intent is *"predominantly* one of obtaining livelihood *and* pecuniary gain" (emphasis added) (S. 49, sec. 101(6), pages 3-5) and 102(1); H.R. 945, sec. 101(6)). This definition, which does not follow the case law, is likely to have a serious weakening effect on the GCA. Current law permits ordinary firearms owners to sell their firearms but not to "engage in the business" of selling firearms without a license.

These provisions expand the number of persons who can engage in firearms transactions or importation without needing a license or having to comply with the record keeping requirements of the law. This definition has loopholes for a person, believing the public ought to be armed for self-protection, who sells large volumes of firearms at no markup or a price which does not make a profit, who would not be "engaged in the business."

Unfortunately, this new definition does not solve the ambiguity that confronts an active collector. Certainly one motive of a person collecting firearms, and frequently the predominant motive shared with other collectors, is to upgrade the value of the collection by making trades or sales that are profitable. A shrewd, lucky or enthusiastic collector may remain confused whether he is "engaged in the business" within the meaning of this new definition.

Courts have not been unanimous regarding the question whether a profit motive is an essential ingredient in determining if one is "engaged in the business" of firearms. However, even among those federal appellate courts which have held that a purpose of making a profit must be shown, none have required that profit making be shown as the *primary* or *predominant* purpose, as S. 49 and H.R. 945 do.[10]

A principal concern of the Committee is that we not permit individuals to buy, sell, and distribute firearms on a repetitive, continuing basis without the necessary records being kept in order to permit tracing if these weapons later wind up being used in crimes. We believe the "principal objective of livelihood and profit" requirement of the proposed definition has this effect. A requirement of proof of objective or motive, unlike a conduct-oriented standard, calls for proof of subjective matters, and is for this reason of questionable wisdom. In a prosecution for engaging in business without a license it is unreasonable to require that the prosecution prove that livelihood *and* profit was the *principal* objective of one who maintains that he buys and sells guns to make a little extra money to add to his personal collection of guns, or because he enjoys learning all about the various firearms that pass through his hands in buying and selling them. While these are legitimate objectives of gun collectors and enthusiasts, the Committee does not believe that one who is, for all intents and purposes, a firearms dealer, should be excused from the licensing and recordkeeping requirements simply by showing that he had other motives beyond just livelihood and profit.

Weakening the Firearms Tracing Program by weakening recordkeeping and restricting Secretary's ability to examine and keep records

In addition to changing the requirements concerning who needs to have a license (and therefore must keep records) and raising the state of mind necessary to prove violations of the requirement to keep accurate records (making such violations harder to prove), these bills weaken the firearms tracing program because they—

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[10] See e.g. *United States* v. *Gross*, 451 F.2d 1355 (7th Cir. 1971), *United States* v. *Swinton*, 521 F.2d 1255 (10th Cir. 1975).

(1) Restrict the authority of BATF to inspect the records and inventory of GCA licensees to assure compliance to only one visit per year *and only after advance notification* (S. 49, sec. 103(6), page 15, lines 7-9; H.R. 945, sec. 103(7), page 14, line 12).

(2) Exempt transactions to and from the "personal collection of firearms" of licensees from the recordkeeping requirements for licensees (S. 49, sec. 103(3), pages 12-13, lines 15-4; H.R. 945, sec. 103(4), pages 11-12, lines 18-6). Currently a licensee is required to maintain a record of all his firearms transactions.

(3) Regarding (i) any records of out-of-business licensees, (ii) any reports from licensees concerning information contained in their records, and (iii) any reports of multiple handgun transfers to a non-licensee, S. 49 prohibits the Secretary from keeping this information in a centralized location or from entering it into a computer for storage or retrieval (Only S. 49, sec. 103(6), page 20, lines 1-5. H.R. 945 has no comparable provision.)

(4) Regarding records of out-of-business licensees, S. 49 requires that the records be sent to the joint custody of the Archivist of the United States and the Secretary to be stored in a record center operated by the Archivist, *limits* access of the Secretary to the records *solely* for the purpose of determining from whom a licensee acquired a firearm and to whom such licensee disposed of such firearm, and requiring the Archivist to destroy these records twenty years after they are received.

For example, BATF could not use these records to investigate whether a firearm purchaser from such an out-of-business licensee had made a false statement in connection with such purchase. (Only S. 49, sec. 103(6), page 17, line 8—page 18, line 13. H.R. 945 has no comparable provision.)

Limitations on seizure of contraband and forfeiture of firearms and ammunition

A potentially significant problem is that the authority to seize and forfeit is limited only to firearms or quantities of ammunition "particulary named and individually identified as involved in or used in" specified violations of law. (S. 49, sec. 104(3), pages 25-28; H.R. 945, sec. 104(2), pages 17-18, lines 24-4). This is narrower than interpretations of the Fourth Amendment requirement that a warrant "particularly" described the place to be searched and the persons or things to be seized, and the exceptions involving objects in "plain view" and "inadvertent discovery." It would appear that contraband firearms could not be seized if they had not been specifically identified in the search warrant as being used in a specific violation of the law.

Sales at gun shows—inspection of inventory prohibited

S. 49 allows all licensees to conduct business at any temporary location in the State in which they are licensed if the location is the site of a gun show or event sponsored by any national, state or local organization devoted to the collection, competitive use, or other sporting use of firearms, or an organization that sponsors events devoted to the collection, competitive use or other sporting use of firearms, but appears to *bar* examination of the inventory of the licensee at the temporary location (S. 49, sec. 103(7), pages 20-21).

H.R. 945 has no such provision.

Acquittal of criminal charges bars civil actions

These bills provide that an acquittal on criminal charges is a bar to a revocation of a GCA license based in whole or in part on facts which formed the basis of the criminal charge (even though the standard of proof for a revocation is much lower). This would force the Secretary of the Treasury to elect how to proceed against licensees who violate the law. The government could either undertake a criminal prosecution which it, and a grand jury determined was warranted, but which requires a high burden of proof beyond a reasonable doubt, and thus risk both an acquittal and the inability to proceed civilly to revoke a license, or simply to proceed civilly and permit the criminal violations go unpunished. Forcing this type of election is unwarranted and very rare. It has never been held to offend the Fifth Amendment prohibition against double jeopardy to allow a civil proceeding to follow an unsuccessful criminal prosecution. (S. 49, sec. 103(5)(C), page 13, line 14—page 14, line 2; H.R. 945, sec. 103(6)(B), pages 12-13, lines 17-4).

Liberalizing the importation of firearms

Opens up the importation of firearms by mandating the Secretary to authorize importation of a firearm if there is a sporting purpose and eliminating the requirement that the importer has the burden of satisfying the Secretary of the sporting purpose (S. 49, sec. 105(2), page 29, lines 6-22; H.R. 945, sec. 105(2), pages 18-19, lines 19-4). It is their failure to meet the sporting purpose standard which currently prohibits Saturday Night Specials from being imported into the United States.

Ammunition dealers and recordkeeping

H.R. 3155, would eliminate the need to keep records for sales of ammunition involving less than one thousand rounds. S. 49 and H.R. 945 go much further by eliminating any recordkeeping requirement for sales of ammunition by essentially removing the sale of manufacture from the coverage of the law.

If the legislation passed by the House and the Senate to control the sale of armor piercing ammunition (H.R. 3132) is enacted, then the S. 49/H.R. 945 provisions which remove ammunition dealers from the licensing requirements altogether would be likely to hinder effective enforcement of that act. (The provisions relating to ammunition permeate the GCA, S. 49 and H.R. 945).

Additional drafting problems

(1) The provisions in S. 49 to update the disqualification from receiving or possessing a firearm by drug addicts has a problem in that it would fail to apply to persons who are unlawful users or addicts of most hallucinogenic drugs, including the notorious violence-inducing drug phencyclidine (PCP), methaqualine, tranquilizers or designer drugs. (S. 49, sec. 102 (5), (6) and (7), page 8 lines 10-13, page 9 lines 5-8, and page 10 lines 10-13. H.R. 945 does not attempt to modernize the law in this area.)

(2) The provision relating to obtaining and executing a search warrant in the new inspection provisions in 18 U.S.C. 923(g) (S. 49, sec. 103(6), pages 14-15, lines 12-2) differs significantly from those in Rule 41 of the Federal Rules of Criminal Procedure which is likely to create confusion in the enforcement of the GCA.

POSITIVE FEATURES OF S. 49 AND H.R. 945

Strengthening provision—sale to disqualified persons

Both bills strengthen the GCA by extending the prohibition on transferring firearms to disqualified persons from only licensees to private individuals as well. The state of mind is knowing or having reasonable cause to believe that the purchaser is in the disqualified class. (S. 49, sec. 102(5), page 8, lines 3-23; H.R. 945, sec. 102(5), pages 8-9, lines 23-2).

H.R. 4332 includes such a provision.

Mandatory penalty of carrying or using a firearm during and in relation to a drug trafficking crime

S. 49, as a part of its rewrite of the mandatory penalty provisions strengthened in the last Congress (18 U.S.C. 924(c)), would apply the penalty to a person who uses or carries a firearm during and in relation to "any felony described in the Controlled Substances Act, the Controlled Substances Import and Export Act" or the "Marijuana on the High Seas Act" (21 U.S.C. 955a). (S. 49, sec. 104(2), page 23, lines 5-9). H.R. 945 has no such provision.

H.R. 4332 includes such a provision.

Relief from disabilities

S. 49 includes a feature which is law enforcement neutral and which genuinely serves the interests of the nation's sportsmen and hunters by extending to all persons prohibited from possessing, receiving or transporting firearms the ability to seek relief from the disability. (S. 49, sec. 105(1), pages 28-29). H.R. 945 has no such provision.

This addresses the issue raised by the United States District Court for New Jersey which has invalidated the prohibition on the sale of firearms to those who have been committed to mental institutions or adjudicated mentally defective because the GCA does not authorize the Secretary of the Treasury to relieve that disability for former mental patients as it does for ex-convicts.[11] The court held this failure to violate the equal protection and due process protections of the Fifth Amendment. The court stayed the effective date of the order to permit Congress to correct the constitutional infirmities of these provisions. The government has filed a direct appeal in the Supreme Court and the court has further stayed its order pending the appeal. The Supreme Court noted jurisdiction of *Galioto* on November 4, 1985 and requested full scale briefing of this case. Argument of this case is likely this term.[12]

H.R. 4332 includes such a provision.

Barring importation of "Saturday Night Special" barrels

This section of S. 49 would extend the ban on the importation of critical parts of Saturday night specials to include barrels. Frames and receivers of such firearms cannot now be imported. (S. 49, sec. 105(2)(C), page 29, lines 14-20).

H.R. 4332 includes such a provision.

Clarifying the disabilities under the Gun Control Act

Currently the prohibitions on who may receive, possess and transport firearms are divided among two subsections of the GCA and a subsection of title VII of the Omnibus Crime Control and Safe Streets Act. S. 49 and H.R. 945 would add to the GCA provisions three conditions it does not now cover (which are in title VII: A person who (1) being an alien, is illegally in the United States; (2) has been discharged from the Armed Services under dishonorable conditions; and (3) having been a citizen of the United States, has renounced his or her citizenship.

H.R. 4332 includes such a provision.

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[11] *Galioto* v. *Department of Treasury*, 602 F. Supp. 682 (D.C.N.J., Feb. 7, 1985).

[12] *Galioto* v. *Department of Treasury*, 602 F. Supp. 682 (D.C.N.J., Feb. 7, 1985); —U.S.—, 106 S.Ct. 307, jurisdiction noted, Nov. 4, 1985.

Lesser penalties for merely technical violations of the GCA

S. 49 would provide a misdemeanor penalty for licensees who fail to make required entries or who fail to properly maintain their records. (S. 49, sec. 104(1), pages 22-23, lines 19-3. H.R. 945 has no such provison.)

H.R. 4332 includes such provisions.

VIEWS OF THE ADMINISTRATION

At the Subcommittee's hearing on February 19, 1986, the Deputy Assistant Secretary of the Treasury Edward T. Stevenson conceded that there would be serious problems for law enforcement under these bills. He, with reluctance, turned over to the Subcommittee a seven page "assessment" of S. 49, prepared by the Bureau of Alcohol, Tobacco and Firearms, which contained six positive aspects and eighteen negative aspects which follows:

ASSESSMENT BY THE BUREAU OF ALCOHOL, TOBACCO AND FIREARMS

DEPARTMENT OF THE TREASURY,
BUREAU OF ALCOHOL, TOBACCO
AND FIREARMS,
Washington, DC,
February 10, 1986.

CC-34,270 FE:SRR
Memorandum to: Assistant Secretary (Enforcement and Operations).
From: Director.
Subject: S. 49, the "Firearms Owners Protection Act".

As you requested at the Heads of Bureaus' meeting, I have prepared a memorandum giving our assessment of the strengths and weaknesses of S. 49 (Firearms Owners Protection Act) from an administrative and law enforcement perspective. We provided most of these same comments to the Department when the bill was being considered in the Senate; and, as you can see, some of our concerns were accepted while others were rejected. As the agency responsible for enforcing the Gun Control Act of 1968, a fair hearing of our concerns was probably the most we could expect. We obviously hoped our recommendations would have resulted in more changes than ultimately occurred.

POSITIVE ASPECTS OF S. 49

1. *Ammunition Licensing and Recordkeeping.* The bill would eliminate dealers, pawnbrokers and collectors in ammunition only from the Gun Control Act's licensing provisions. However, importers and manufacturers of ammunition would continue to be licensed. In addition, all recordkeeping provisions concerning ammunition would be repealed. The Bureau and the Department have recognized that current recordkeeping requirements for ammunition have no substantial law enforcement value. In addition, their elimination would remove an unnecessary recordkeeping burden from licensees. Felons and other proscribed persons would still be prohibited from transporting or receiving ammunition in commerce.

2. *Sales to Prohibited Persons.* The bill makes it unlawful for any person, not only licensees, to sell or otherwise dispose of firearms to certain prohibited categories of persons, e.g., a convicted felon. Under existing law it is only unlawful for a licensee to sell or otherwise dispose of firearms knowing or having reasonable cause to believe that such a person is in a prohibited category. This proposal would close an existing loophole whereby qualified purchasers have acquired firearms from licensees on behalf of prohibited persons.

3. *Repeal of Certain Provisions of Title VII of the Omnibus Crime Control and Safe Streets Act of 1968.* The bill would repeal most of Title VII and

incorporate its provisions into the Gun Control Act. Thus, all provisions of Federal firearms laws imposing disabilities on felons and other prohibited persons would be combined in the GCA and existing inconsistencies between Title VII and the GCA would be eliminated. The Armed Career Criminal Act, imposing mandatory penalties based upon previous robbery or burglary convictions, would be retained in Title VII. Both ATF and the Department have supported legislation of this nature in the past.

4. *Gun Shows.* The bill would permit licensed importers, manufacturers and dealers to conduct business temporarily at locations other than that specified on their license, within the same State, pursuant to regulations issued by the Secretary. This provision is similar to regulations recently promulgated which allow licensees to conduct business at gun shows if the gun show is located in the same State as that specified on the license. See 27 C.F.R. § 178.000. The bill would remove any doubt concerning the statutory validity of such regulations.

5. *Importation of Certain "Saturday Nite Special" Parts.* Current law prohibits, among other things, the importation of firearms, including firearms frames or receivers, not particularly suitable for or readily adaptable to sporting purposes. Generally, easily concealable and inexpensive handguns are not importable under existing law. The bill would add a new prohibition against the importation of barrels for nonsporting handguns. This change will, to some extent, discourage the existing circumvention of the importation controls which allows the assembly of nonsporting handguns from imported parts.

6. *Mandatory Penalties.* The bill would provide that those who carry or use firearms in the commission of Federal drug offenses will be subject to the Act's mandatory penalties. This amendment would resolve the current uncerntainty whether such crimes are crimes of violence and, thus, fall within the existing mandatory penalty provision. However, there are significant negative aspects of the mandatory penalty provision which are discussed below.

NEGATIVE ASPECTS OF S. 49

1. *Definition of "Engaged in the Business."* The definition is too narrow since it requires a person to engage in a "regular course of business for the purpose of livelihood and profit." Consequently, some criminal activity that may be prosecuted under existing law for engaging in a firearms business without a license may not be prosecutable under S. 49. For example, an individual who on several occasions disposed of firearms at cost to terrorists for the purpose of facilitating their crimes may not be held to be "engaging in the business."

2. *Interstate Sales.* The bill would permit interstate sales of firearms, including handguns, by licensees to nonlicensees if applicable State and local laws are complied with. State and local laws in the State wherein the purchaser resides would be defeated since, as a practical matter, licensees will not have knowledge of such laws. The problem is not cured by the requirement that the Secretary annually provide licensees with a publication containing such laws since the publication would not cover all local ordinances and would never be current. Purchasers' violations would be difficult to prove in view of the requirement to prove willfulness on their part, i.e., the purchaser knew that State or local law was violated. While the bill would create a presumption of knowledge of applicable State and local laws on a licensee's part, no such presumption would exist on the part of the purchaser.

3. *Warrantless Inspections of Licensees' Records and Inventory.* (a) The prohibition against unannounced inspections would enable unscrupulous licensees to conceal violations of the law; (b) limiting compliance inspections to a single, annual inspection would have the same result and would be too infrequent to ensure compliance; and (c) the prohibition against use of evidence uncovered in such inspections in prosecutions for other than willful recordkeeping violations and sales to proscribed categories of person would preclude prosecutions for serious crimes discovered, e.g., narcotics offenses, illegal possession of machineguns and silencers, illegal interstate firearms sales.

4. *Recordkeeping.* The bill's provision allowing licensees to dispose of firearms without maintaining records of such transactions, if the firearms have been in the licensee's personal collection for at least 1 year, would enable unscrupulous licensees to easily circumvent the recordkeeping requirements. Moreover, it would hamper law enforcement's ability to trace firearms and, hence, solve crimes. The exception for transfers into a personal collection to "evade" the recordkeeping requirements could not, as a practical matter, be proved.

5. *Records in the Custody of the Government.* The bill provides that licensees' reports to the Government and out-of-business records may not be kept by the Secretary at a central location. The requirement to decentralize the storage of such records is totally unnecessary and, from an administrative standpoint, is costly and burdensome.

6. *License Denial and Revocation.* The bill would not permit license denial or revocation on grounds for which that applicant or licensee was prosecuted in a criminal case and acquitted. Because the burden of proof on the Government is less stringent in civil actions, a civil license denial or revocation proceeding should not depend on the outcome of the criminal case. No constitutional rights are violated by the civil proceeding when the applicant or licensee was previously acquitted of criminal charges.

7. *Forfeiture.* (a) The bill would generally preclude forfeiture of firearms on grounds for which the owner or possessor was prosecuted in a criminal case and acquitted. Because the burden of proof on the Government is different in civil actions, a civil forfeiture of the firearms should not depend on the outcome of the criminal case. No constitutional rights are violated by the forfeiture of firearms subsequent to the owner's or possessor's acquittal of criminal charges. *United States* v. *One Assortment of 89 Firearms,* 465 U.S. 354 (1984). (b) The bill would allow the seizure and forfeiture of firearms "intended to be used" in a violation of the GCA only in connection with certain specified offenses. The list of specified crimes is too narrow, *e.g.,* while firearms intended to be received by persons under indictment may be seized, firearms intended to be received by persons such as felons, fugitives, mental incompetents and illegal aliens would not be subject to seizure and forfeiture.

8. *Relief from Disabilities.* Current law provides for the Secretary's granting of relief from federal firearms disabilities to persons convicted of crimes punishable by imprisonment for a term exceeding 1 year. The bill would extend the right to apply for relief to other proscribed persons, *e.g,* fugitives, adjudicated mental incompetents, illegal drug users and addicts, and illegal aliens, and provide for *de novo* judicial review of administrative action denying relief.

9. *Interstate Transportation of Firearms.* The bill allows the trans-

portation of an unloaded, inaccessible firearm in interstate commerce notwithstanding any State law to the contrary. This provision would erode the integrity of State laws and impede the efforts of State and local law enforcement officials to enforce such laws. In other words, State prosecutors will find it difficult to rebut violators' contentions that their firearms were moving in interstate commerce. Issues raised in State prosecutions relative to when interstate commerce began and when it ended will be difficult to resolve. Furthermore, a presecution involving a purely intrastate transportation of a firearm may be defeated by the possessor's contention that an interstate journey with the firearm had just commenced.

10. *Penalties for Violating GCA.* (a) The bill provides a knowledge or intent element of proof with respect to all GCA offenses, "knowledge" as to some and "willfulness" as to others. Willfulness may be interpreted to mean knowledge of the requirements of law and the specific intent to violate legal requirements. The willfulness element would make it extremely difficult to successfully prosecute many cases, *e.g.*, a nonlicensee's illegal interstate firearms purchases. (b) By reducing all licensee recordkeeping violations to misdemeanors, serious violations could not be adequately prosecuted and punished, *i.e.*, a dealer's sale of firearms off-record and his willful refusal to make or maintain any required record could only be prosecuted as misdemeanors.

11. *Mandatory Penalties for Criminal Misuse of Firearms.* The bill weakens the existing mandatory penalty provision relative to the use or carrying of firearms in commission of a Federal crime of violence by: (a) adding an element to the carrying offense that the carrying be "in furtherance of" the violent crime (existing law already requires that the carrying be "in relation to" the underlying crime); and (b) allowing the court to avoid imposing the penalties if the defendant acted in self-defense. Relief from the mandatory penalties would occur after the defendant has been found guilty of using a firearm to commit a violent Federal crime. Moreover, the penalties could be removed even though the defendant failed to prove self-defense as a defense to the violent crime. The bill may be interpreted to allow a fleeing felon to avoid the penalties where he used a firearm to make his escape.

12. *Definition of Conviction.* The bill provides that what constitutes a felony conviction would be determined by the law of the jurisdiction where the conviction occurred. This would require the Bureau to examine the peculiar laws of each state to determine whether a person is convicted for Federal purposes. Further, any conviction which has been expunged or pardoned would not be considered a disabling offense under GCA. Under present law, State pardons and State court proceedings which set aside a plea or verdict of guilty upon a successful completion of probation do not eliminate the underlying conviction insofar as Federal law is concerned and such a person must still apply for and receive relief from Federal firearms disabilities.

13. *Collector Recordkeeping.* The bill would require that licensed collectors maintain only a record of acquisition and disposition of firearms, i.e., the so-called "bound book." Firearms Transaction Records, Forms 4473, executed by the purchaser and used by the seller to establish the purchaser's eligibility and identity would be eliminated. the Act was recently amended to permit the importation of surplus military curio or relic firearms and since 1984 thousands of such weapons have been imported. Many of these weapons now eligible for importation are standard military weapons manufactured as

late as 1945. Because of these influx of the weapons into the country, law enforcement's need for licensed collectors to maintain Forms 4473 still exists.

In your assessment of the accuracy of the above analysis of the bill's strengths and weaknesses, you should be aware that we have primarily approached it from the standpoint of its ease of administration and its impact on law enforcement. The firearms industry (including licensed dealers), the various special interest groups, and other concerned and affected members of the public in all probability view our concerns from an entirely different perspective. Accordingly, they may well perceive strengths where we see weaknesses and vice versa. Nevertheless, I hope the above analysis will better prepare you to address questions concerning the bill over the months to come.

I believe that the appropriate role of ATF is to provide technical and professional comments to you and other decision makers. Whatever the final outcome, we will enforce the law (and any changes) as effectively as we can within existing resources.

STEPHEN E. HIGGINS.

ACTION BY THE SUBCOMMITTEE ON CRIME

The Subcommittee caucused on March 4 and 5, 1986 and determined to develop its own bill to address the needs of the firearms using community and the needs of law enforcement. On March 5, 1986, Mr. Hughes introduced H.R. 4305, the Federal Firearms Law Reform Act of 1986.

The Subcommittee on Crime marked up H.R. 4305 on March 6, 1986. Five amendments were adopted by the Subcommittee (discussed in the section by section analysis). The bill was approved unanimously and ordered reported as a clean bill. It was introduced on March 6, 1986 as H.R. 4332.

ACTION BY THE COMMITTEE

On March 11, 1986, a quorum being present, the Committee on the Judiciary approved H.R. 4332 by a recorded vote of 35-0 with an amendment in the nature of a substitute.

SECTION-BY-SECTION ANALYSIS

Section 1 is the short title.

Section 2. Prohibition on transfer and possession of silencers

(a) The definition of silencer is amended to include any part designed or redesigned and intended to be used as a silencer for a firearm. This will help to control the sale of incomplete silencer kits that now circumvent the prohibition on selling complete kits.

(b) This section prohibits the transfer and possession of silencers after the effective date of the Act not lawfully possessed on the effective date.

It allows current possessors of lawfully registered silencers to continue their legal possession and transfer such registered silencers in conformity with the law (the National Firearms Act).

The Subcommittee began examination of the criminal misuse and availability of silencers at a hearing on May 24, 1984. As of May 24, 1984 there were 12,801 silencers lawfully possessed and registered with the Secretary of the Treasury pursuant to the National Firearms Act. Yet during FY 1983, a total of 916 silencers were taken into custody by BATF, a significantly large number in comparison to the total number of legal silencers.[13]

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[13] Letter from Stephen E. Higgins, Director, Bureau of Alcohol, Tobacco and Firearms, U.S. Department of the Treasury, to William J. Hughes, Chairman, Subcommittee on Crime in Hearings of the Subcommittee on Crime on H.R. 641 and Related Bills: Armor Piercing Ammunition and the Criminal Misuse and Availability of Machineguns and Silencers (97th Cong. 2nd sess., May 17, 24 and June 27, 1984, Serial No. 153) at 210-211.

This provision is substantially different from a provision relating to silencers in H.R. 3155 in that the status of all legally possessed silencers remains unchanged. The Committee adopted an amendment eliminating authority for the Secretary of the Treasury to purchase silencers that may be surrendered to the Secretary.

(c) This subsection conforms the definition of the terms "firearm" in the Gun Control Act and the National Firearms Act to the amendments made by subsection (a). Paragraph (3) extends the current provisions of the Gun Control Act (i) prohibiting non-licensees from transporting, in interstate or foreign commerce, machine guns, short-barreled rifles, short-barreled shotguns and destructive devices (except as specifically authorized by the Secretary consistent with public safety and necessity) to silencers, (18 U.S.C. 922(a)(4)) and (ii) prohibiting a licensee to sell or deliver a destructive device, machine gun, short-barreled rifle and short-barreled shotgun to any person (except as specifically authorized by the Secretary consistent with public safety and necessity) to silencers (18 U.S.C. 922(b)(4)).

Section 3. Lawful interstate sale of long guns

This section modifies the limitation in 18 U.S.C. 922(b)(3) on licensees to sell firearms to persons who do not reside in the State in which the licensee's place of business is located *to permit* sale or delivery of any rifle or shotgun to a non-resident if "the transferee meets in person with the transferor to accomplish the transfer" and the sale, delivery and receipt fully comply with the legal conditions of sale in both States. Licensees shall be presumed, in the absence of evidence to the contrary, to have had actual knowledge of the State laws and published ordinances of both States.

This section was added by amendment offered by Rep. Shaw adopted by the Subcommittee on Crime. It is adapted from H.R. 945/S. 49.

Section 4. Unlawful sale, possession, or receipt of firearms and ammunition—extension of prohibition on sale to unqualified persons

This section makes it a crime for any person to transfer a firearm to another person knowing that such other person is unqualified. This section extends the prohibition which now applies only to Federal firearms licensees to all persons who transfer a firearm. (Current 18 U.S.C. 922(d) prohibits licensees to sell or dispose of firearms to anyone in one or more of four classes of unqualified persons "knowing or having reasonable cause to believe" that such person is unqualified.)

The Committee adopted an amendment offered by Mr. McCollum to set forth only a knowing state of mind for non-licensees which would require slightly more culpability than the "knowing or having reasonable cause to believe" standard carried forward for licensees.[14]

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[14] The requirement that the Government prove that prohibited conduct was "knowing" has been held to include "willful blindness." *United States* v. *Jewell*, 532 F.2d 697 (9th Cir.) *cert. denied*, 426 U.S. 951 (1976); and *United States* v. *Jacobs*, 475 F.2d 270 (2d Cir.), *cert. denied sub nom. Thayer* v. *United States*, 414 U.S. 821 (1973).

Willful blindness requires an awareness of a high probability of the existence of the circumstance. (*See United States* v. *Jewell*, 532 F.2d 697, 700 n.7 (9th Cir. 1976) quoting Glanville Williams, *Criminal Law:*

> A court can properly find willful blindness only where it can *almost* be said that the defendant actually knew. He suspected the fact; he realized its probability; but he refrained from obtaining the final confirmation because he wanted in the event to be able to deny knowledge. This, and this alone, is willful blindness. It requires in effect a finding that the defendant intended to cheat the administration of justice. (emphasis added).

This section also combines in one section (18 U.S.C. 922(g)) all of the offenses related to sale of firearms *to* unqualified persons, and offenses of receipt, possession and transport of firearms *by* unqualified persons (or their employees) now divided between Title I of the Gun Control Act (18 U.S.C. 922(d), (g) and (h) and Title VII of the Omnibus Crime Control and Safe Streets Act (18 U.S.C. 1202(a) and (b). The Committee adopted technical amendments carrying forward the prohibition in 18 U.S.C. 1202(b) in this section and substituting the phrase "has renounced" for the work "renounces".

Persons are now unqualified from receiving, possessing or transporting firearms in interstate or foreign commerce or firearms which have been shipped or transported in interstate or foreign commerce if they are or have been:

(1) under indictment for or convicted of a felony; [15]

(2) a fugitive from justice;

(3) an unlawful user of or addicted to any controlled substance (N.B., infra);

(4) adjudicated as a mental incompetent or committed to any mental institution;

(5) discharged from the Armed Forces of the United States under dishonorable conditions;

(6) has renounced their United States' citizenship; or

(7) an alien illegally in the United States.

(N.B. This section also replaces and correctly modernizes the prohibition on receiving firearms or ammunition by a person "who is an unlawful user of or addicted to marihuana or any depressant or stimulant drug (as defined in section 201 (v) of the Federal Food, Drug, and Cosmetic Act) or narcotic drug (as defined in section 4731(a) of the Internal Revenue Code of 1954)" by substituting "who is an unlawful user of or addicted to a controlled substance as defined in the Controlled Substances Act." Current law does not include hallucinogenic drugs that were controlled by the Controlled Substances Act, including the violence-inducing drug phencyclidine (PCP), various tranquilizers, designer drugs and other substances that have been added to the schedules of controlled substances.)

In subsection (b) Title VII of the Omnibus Crime Control and Safe Streets Act of 1968 is repealed. The Armed Career Criminal Act of 1984, which was an amendment to title VII would be reenacted by section 8 of this bill. Section 923(d) (1)(B) of title 18, U.S.C., which authorizes the Secretary to deny a license under the Gun Control Act if a person is unqualified from receiving, shipping or transporting a firearm, is amended to conform to the changes made in this section.

This section is adapted from H.R. 945/S. 49.

Section 5. Gun show sales

This section creates a new subsection (18 U.S.C. 922(h)), to permit the sale of a firearm to a person who does not appear in person at the licensee's business premises (in addition to the exception in 18 U.S.C. 922(c)) *to permit* sale in person at a temporary gun show or event sponsored by organizations devoted to, or that sponsor events devoted to, or that sponsor events devoted to, the collection, competitive use, or other sporting use of firearms and the location of the sale is in the state in which the licensee's business premises are located. Records of such dispositions of firearms shall be kept in the permanent records of the licensee at the location specified on the license. Business may not be conducted from a motorized or towed vehicle.

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[15] Persons under indictment are prohibited from receiving or transporting firearms but may continue to possess them.

The Committee adopted an amendment offered by Mr. McCollum providing that any inspection or examination of inventory or records under this chapter by the Secretary at such temporary location shall be limited to inventory consisting of, or records relating to, firearms held or disposed at such temporary location. (The current provisions of 18 U.S.C. 922(h) are transferred to section 922(g) of title 18 U.S.C. by the amendment in section 4 of this bill.)

Subsection (b) of this section prohibits the Secretary from imposing any additional license fees (under 18 U.S.C. 923(a)) upon dealers who exercise the privilege of engaging in business at a temporary gun show or event.

This section is from H.R. 945/S. 49.

Section 6. Prohibition on the importation of Saturday Night Special barrels

This section expands the current prohibition in 18 U.S.C. 923(1) on the importation of key components of "Saturday night specials" to ban the import of barrels for Saturday night specials. 18 U.S.C. 922(1) prohibits the importation of any firearm that is not imported under the provisions of 18 U.S.C. 925(d) which generally requires that the firearm be "generally recognized as particularly suitable for or readily adaptable to sporting purposes." The Secretary has determined that handguns commonly known as "Saturday night specials" are not so recognized, and thus may not be imported. The frames and receivers of firearms are considered firearms under the definition of the term "firearm" (18 U.S.C. 921(a)(3)) and thus cannot be imported currently.

The Attorney General's Task Force on Violent Crime specifically recommended that the importation of the unassembled parts of Saturday night specials be prohibited.[16]

This section is taken from S. 49.

Section 7. Administrative flexibility for invoking license-related penalties and other licensing-related matters

(a) This subsection limits the Secretary to requiring information on applications for licenses only that information necessary to determine eligibility for licensing.

This provision is taken from S. 49 and was added by amendment adopted by the Subcommittee on Crime.

(b) This subsection aids law enforcement by broadening the circumstances to be reviewed by the Secretary in approving applications for a license under the GCA. Currently applications for a license cannot be approved if the applicant is prohibited from transporting, shipping, or receiving firearms or ammunition under *Federal* law. The bill permits the Secretary to deny a license application if the applicant is "prohibited by applicable *State* law from engaging in conduct necessarily incident to business subject to license" under the Gun Control Act (for example, relating to the receipt or transportation of firearms under State law, collecting state sales taxes, or otherwise operating a business). It makes no sense for the Secretary to have to issue a license for a person to engage in business in a State when the Secretary is aware such person is forbidden by the law of that State from engaging in that business, or any other business.

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[16] "Recommendation 19:

"Title I of the Gun Control Act of 1968 prohibits the importation of certain categories of handguns. However, the Act does not prohibit the importation of the unassembled parts of these guns, thereby permitting the circumvention of the intended purpose of this title of the Act. It is therefore recommended that the Act be amended to prohibit the importation of unassembled of handguns which would be prohibited if assembled.'' Final Report of the Attorney General's Task Force on Violent Crime, U.S. Department of Justice, August 17, 1981 at 29.

This subsection is taken from H.R. 3155.

(c) *Administrative Flexibility for Invoking License—Related Penalties:*

This subsection gives the Secretary an alternative, less severe sanction that may be used to punish less serious violations of the Gun Control Act by licensees. It would allow the Secretary to suspend a license as an alternative to the sole penalty now available of revocation of the license. Revocation would remain an available sanction where appropriate. This subsection is taken from H.R. 3155.

Subsection (d) limits the number of compliance inspections the Secretary may conduct to not more than three in any 18 month period unless the Secretary or the Director of the Bureau of Alcohol, Tobacco, and Firearms personally approves such inspection. The authority to approve compliance inspections in excess of three in any 18 month period may not be delegated below the level of the Director of the Bureau of Alcohol, Tobacco and Firearms. This limitation was adopted by an amendment offered by Mr. McCollum and adopted by the Subcommittee on Crime.

Section 8. Modification of penalty provisions and reenactment of armed career criminal provisions

Paragraphs (1) and (2) require proof of a knowing state of mind for the prohibited conduct for the felony violations of the GCA. Case law interpreting the criminal provisions of the Gun Control Act have required that the government prove that the defendant's conduct was knowing, but not that the defendant knew that his conduct was in violation of the law.[17] It is the Committee's intent, that unless otherwise specified, the knowing state of mind shall apply to circumstances and results. This comports with the usual interpretations of the general intent requirements of current law.[18]

The Committee specifically rejected the proposals in S. 49 and H.R. 945 that a standard of "willfulness" be adopted as a state of mind requirement for certain offenses. It had been suggested, in support of the state of mind formulations in S. 49, that "A firearms law concerned about right and wrong and those who do evil will make intent to do evil, an element of the violation." [19] Yet the criminal law traditionally does not require proof that the defendant knew that his conduct was in violation of the law [20] or that the defendant intended to violate the law.[21] In fact the term "willful" fails to give courts any clear guidance of the *scienter* required. "[T]he term 'willful' has been construed by the courts in a variety of ways, often inconsistent and contradictory. The courts have defined a 'willful' act as an act done voluntarily as distinguished from accidentally, an act done with specific intent to violate the law, an act done with bad purpose, an act done without justifiable excuse, an act done stubbornly, an act done without grounds for believing it is lawful, and an act done with careless disregard whether or not one has the right to so act."[22]

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[17] *United States* v. *Freed*, 401 U.S. 601, 607-610 (1971).

[18] "In a general sense . . . 'knowledge' corresponds loosely with the concept of general intent." *United States* v. *Bailey*, 444 U.S. 394, 405 (1980).

[19] Statement submitted to the Subcommittee on Crime of Mr. Jerry Prieser, President, Federation of New York State Rifle and Pistol Clubs, Inc., October 28, 1985, at hearing in New York City.

[20] *United States* v. *Currier*, 621 F.2d 7, 9-10 (1st Cir. 1980).

[21] Mr. Justice Holmes defined general intent, "If a man intentionally adopts certain conduct in circumstances known to him, and that conduct is forbidden by the law under the circumstances, he intentionally breaks the law in the only sense in which the law ever considers intent." *Ellis* v. *United States*, 206 U.S. 246, 257 (1907). *See also United States* v. *Haldeman*, 559 F.2d 31 (D.C. Cir. 1976), *cert. denied sub nom. Ehrlichman* v. *United States*, 413 U.S. 933 (1977); *United States* v. *Byrd*, 352 F.2d 570 (2d Cir. 1965).

This provision is adapted from H.R. 945/S. 49.

Misdemeanor penalty for violation of recordkeeping requirements

Paragraph (3) reduces the penalty for knowing violation of recordkeeping requirements of the Gun Control Act (18 U.S.C. 922(b)(5) and 922(m)), and for violation of the requirement that the licenses be kept posted (18 U.S.C. 923(h)), to a misdemeanor.

This paragraph is adapted from H.R. 945/S. 49.

This section reenacts the Armed Career Criminal Act of 1984 to conform to the amendments made by section 4. The Armed Career Criminal Act is consistent with Recommendation 21 of the Final Report of the Attorney General's Task Force on Violent Crime regarding Federal prosecution of felons apprehended in the possession of a firearm.[23] This avoids a defect of H.R. 945 which would have repealed that act.

Section 9. Recordkeeping and reporting amendments

(a) Eliminate ammunition sale recordkeeping

This subsection would eliminate recordkeeping in the sale of ammunition in quantities of less than 1,000 rounds except for armor-piercing ammunition. This would eliminate extensive recordkeeping which serves no law enforcement purpose. (The House passed on December 17, 1985, H.R. 3132, The Law Enforcement Officers Protection Act of 1985, to control the manufacture, importation and sale of armor-piercing ammunition. The Senate passed H.R. 3132 with an amendment in the nature of a substitute (the text of S. 104, as amended) on March 6, 1986. The recordkeeping exception for armor-piercing ammunition is in recognition of the serious threat presented to law enforcement officers by the availability of armor-piercing ammunition and in anticipation of the enactment of additional controls on such ammunition.)

This approach avoids the total decontrol on the sale of ammunition that would result from the amendments of H.R. 945 and S. 49. Under that approach, no license would be required for the sale of ammunition.

This provision is adapted from H.R. 945 and S. 49, and H.R. 3155.

(b) Codification of existing regulation requiring reports of multiple firearm sales

This subsection enacts the current regulation requiring multiple firearms sales, adding it to 18 U.S.C. 923(g).[24] This provision is taken from S. 49 and was added by amendment offered by Rep. McCollum and adopted by the Subcommittee on Crime.

Section 10. Mandatory penalty for the use of a firearm, or the use or carrying of a firearm loaded with armor-piercing ammunition, during and in relation to drug trafficking crimes

(a) This subsection provides that whoever uses or carries a firearm during and in relation to the manufacture, distribution, or importation of controlled substances shall be subject to a mandatory prison term of five years in prison. This section expands the coverage of the mandatory prison term for using or carrying a firearm during and in relation to a Federal crime of violence enacted in October 1984. This amendment is consistent with Recommendation 17 of The Attorney General's Task Force on Violent Crime that the mandatory prison term for the use of a firearm apply not only to the commission of crimes of violence but to the commission of Federal felonies generally.[25] This provision is adapted from S. 49.

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[22] Senate Rep. 97-307 to accompany S. 1630, The Criminal Code Reform Act of 1981 (97th Cong., 1st sess.) at 63-64. *See also Working Papers* of the National Commission on Reform of Federal Criminal Laws, July 1970, Vol. I at 148, and cases cited therein.

[23] Recommendation 21, Final Report of the Attorney General's Task Force on Violent Crime, U.S. Department of Justice, August 17, 1981 at 30.

[24] 27 Code of Federal Regulations § 178.126a Reporting multiple sales or other dispositions of pistols and revolvers.

(b) This subsection was added by amendment adopted by the Subcommittee on Crime to the mandatory penalty for using or carrying a firearm loaded with armor-piercing ammunition during and in relation to the commission of violent crimes (18 U.S.C. 929(a), enacted October 12, 1984) to cover such conduct during and in relation to drug trafficking crimes.

Section 11. Enhanced penalty for machine gun use in crime and other machine-gun related matters

Subsection (a) adds a new mandatory prison term of ten years for using or carrying a machine gun during and in relation to a crime of violence or a drug trafficking offense for a first offense, and twenty years for a subsequent offense to the mandatory penalty provision of 18 U.S.C. 924(c).

Subsection (b) amends the definition of machine gun to include any *part* designed and intended to be used for converting any weapon into a machine gun. It amends the definition of machine gun in the National Firearms Act and defines "machine gun" for the Gun Control Act by cross reference to the National Firearms Act. This will help to control the sale of incomplete machine gun conversion kits that now circumvent the prohibition on selling completed kits. Section 11 incorporates a recommendation by the Administration.[26] This provision is also related to Recommendation 20 of the Attorney General's Task Force on Violent Crime regarding the easy conversion of semiautomatic weapons into fully automatic weapons.[27] This section is new to this legislation.

Section 12. Limitation on forfeiture of firearms to felony violations

This section limits the forfeiture of firearms permitted under 18 U.S.C. 924(d) only to those involved in or intended to be involved in felony violations of the law. This is a major narrowing of the current law which now permits forfeiture of firearms involved in or used in any violation of the Gun Control Act or its regulations. It addresses a major concern of firearms licensees who have, on occasion, had their inventory of firearms forfeited due to errors in the records required to be kept under the act.

This section is adapted from H.R. 945/S. 49.

Section 13. Broadened relief from disabilities

This section reforms the provisions of 18 U.S.C. 925(c) to improve the ability of the deserving members of the public to obtain relief from the legal disqualification from firearms ownership (possession or receipt).

The current law (Title I of the Gun Control Act, 18 U.S.C. 922(d), (g) and (h)) and title VII of the Omnibus Crime Control and Safe Streets Act (18 U.S.C. Appendix II, section 1202)) provides that seven categories of persons are unqualified from receiving, possessing, shipping, transferring, or transporting firearms in interstate or foreign commerce or which have been shipped or transported in interstate or foreign commerce. (See section 4 of this bill which amends 18 U.S.C. 922(g) and combines those provisions in a single subsection).

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[25] Recommendation 17, Final Report of the Attorney General's Task Force on Violent Crime, U.S. Department of Justice, August 17, 1981 at 29.

[26] Testimony of Stephen E. Higgins, Director of the Bureau of Alcohol, Tobacco and Firearms, U.S. Department of the Treasury, at hearings before the Subcommittee on Crime, February 19, 1986.

[27] Recommendation 20, Final Report of the Attorney General's Task Force on Violent Crime, U.S. Department of Justice, August 17, 1981 at 29, 32.

A procedure for relief from such disabilities (18 U.S.C. 925(c)) is now provided *only* for persons who have been convicted of certain felonies. The Gun Control Act did not permit persons convicted of felonies under the Gun Control Act, many of which are administrative in nature, to petition for relief of the disability. This omission has been felt to be an unjust discrimination by the sporting public.

The failure of the Gun Control Act to provide a procedure for relief of former mental patients resulted in a challenge to the validity of this disqualification for mental patients that was upheld by the United States District Court of New Jersey, and which is now on appeal to the United States Supreme Court.[28]

This section would allow any person in the disqualified class to petition the Secretary for relief of the disability.

This section is taken from S. 49.

Secondly, in the evolution of State law statutes are often enacted which have the effect of expunging criminal convictions for conduct that is no longer deemed criminal or felonious. The Secretary is empowered to declare that each person obtaining relief under such State law is relieved from disability under Federal law. This subsection was adapted from H.R. 3155 and was simplified by an amendment adopted by the Subcommittee on Crime.

Section 14. Interstate transport of rifles and shotguns

This section has been included to assure the right of an individual to travel in and between States with a rifle or shotgun, notwithstanding the firearms laws of those States (and any local jurisdictions through which such individual may pass), (1) if such individual can lawfully possess such a firearm: (2) if the rifle or shotgun is secured (it is enclosed or cased, it is not readily accessible, and it is unloaded); and (3) it is transported for the purpose of participating in or returning from legal hunting, shooting events, or sporting activity, or for changing such individual's State or residence.

This provision has been drawn very narrowly because it is preemption of the laws of the various States and their subdivisions. The Committee is very sensitive to the fact that many States and a great many local jurisdictions have enacted specific controls upon the carrying and transportation of handguns. Handguns are widely used to commit crimes of violence. According to the Attorney General's Task Force on Violent Crime, 77.8% of the firearms murders in the United States in 1978 involved the use of a handgun.[29] The Uniform Crime Reports since that time show that the involvement of handguns in murders committed with firearms has stayed at equally high levels.[30]

Many states have adopted comprehensive systems to control the manner in which handguns may be acquired, carried and transported. In fact some 8 States include in their State constitutional guarantee of a right to keep and bear arms a specific exception regarding the carrying of concealed weapons.[31] Some 34 States require some form of a permit to carry a handgun.[32] Consequently the Committee was unwilling to extend this preemption to cover easily concealed firearms.

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[28] *Galioto v. Department of the Treasury*, 602 F. Supp. 682 (D.C.N.J., Feb. 7, 1985); U.S. 106 S. Ct. 307, jurisdiction noted, Nov. 4, 1985.

[29] Final Report of the Attorney General's Task Force on Violent Crime, U.S. Department of Justice, August 17, 1981 at 29-33, Recommendations 17-22; Report to the Nation on Crime and Justice: The Data, Bureau of Justice Statistics, U.S. Department of Justice, October 1983 at 14.

[30] Crime in the United States—1984: Uniform Crime Reports for the United States, Federal Bureau of Investigation, U.S. Department of Justice, July 28, 1985 (Printed annually), pp. 10-11.

This provision does not exempt any resident of a state or local jurisdiction from any of the requirements of such State or local law.

This provision is adapted from H.R. 945/S. 49. An amendment was offered by Rep. Shaw and adopted by the Subcommittee on Crime to permit such travel with a secured rifle or shotgun for any lawful sporting activity.

Section 15. Record check for criminal convictions and other disqualifications for the purchase of handguns

This section provides for a notification to law enforcement authorities of a handgun purchase to permit a check of records of criminal conviction or other disqualification of the purchaser.

The notification is made by the licensee by mailing a copy of the form required to be filled out by the purchasers of firearms, (1) to the chief law enforcement officer of the place of residence of the purchaser, and (2) to the FBI. The form includes a sworn statement by the purchaser setting forth full name, sex, height, weight, race, residence address, date of birth, place of birth, and a declaration whether or not they are subject to any of the disqualifications of the law. (Representative of the type of form the Committee contemplates is Firearms Transaction Record Part I (ATF Form 4473 (5300.9) Part I (2-85))). The licensee completes the form by stating either that the purchaser is known to the licensee or that the purchaser identified himself in a manner described on the form specifying the type of identification (e.g. driver's license) and any number on the identification (which in many instances will be the purchaser's social security number). The FBI shall examine its criminal history records which may reveal a circumstance making illegal the receipt or possession of the handgun by the transferee. If the FBI finds evidence of such a disqualification, it shall notify such chief law enforcement officer.

The licensee may transfer the handgun as soon as is permitted under State and local law after the purchaser completes the necessary forms.

One of the major recommendations of the Attorney General's Task Force on Violent Crime (appointed by President Ronald Reagan's first Attorney General, William French Smith) was that the Gun Control Act of 1968 should be amended to prohibit "dangerous individuals from acquiring firearms" by providing

> That a waiting period be required for the purchase of a handgun to allow for a mandatory records check to ensure that the purchaser is not in one of the categories of persons who are proscribed by existing federal law from possessing a handgun.[33]

The Task Force made a number of salient points. First, "There is, at present, no effective method to verify a purchaser's eligiblity." Second, "Since drug addicts, felons, mental defectives, and the like are not the best risk for 'the honor system,' a waiting period between the time of signing the presently required form and delivery of the handgun to the purchaser to verify the purchaser's eligibility is *sensible and necessary* to effectuate the purposes of the Acts." (emphasis added). Third, ". . . to be effective there should be adequate record check methods available." [34]

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[31] Colorado, Kentucky, Louisiana, Mississippi, Missouri, Montana, New Mexico, North Carolina, cited in Ronhovde, Kent M., The Second Amendment: A Legal Anaylsis, Congressional Research Service, Library of Congress, March 24, 1977, Appendix B.

[32] "Survey of Select State Firearm Control Laws" by Kent M. Ronhovde and Gloria P. Sugars in Federal Regulation of Firearms: A Report Prepared for the Use of the Committee on the Judiciary, United States Senate, by the Congressional Research Service, Library of Congress, December 30, 1981 (Printed May 1982), 97th Cong. 2d Sess. Judiciary Committee Print at 204-228.

[33] Recommendation 18(b), Final Report of the Attorney General's Task Force on Violent Crime, U.S. Department of Justice, August 17, 1981, at 29.

The Subcommittee on Crime and the Committee discussed the question of a waiting period extensively. Although there was strong support for a 15-day waiting period, there was also strong opposition, to some degree on the basis of the inconvenience to the propsective handgun purchaser, but in large measure based upon a concern that inclusion of a waiting period provision would preclude the establishment of a broad consensus in support of the Committee's bill.

As a compromise, the Subcommittee developed the approach included in this section to give to law enforcement the best possible means of learning when disqualified persons may be illegally acquiring handguns.

The Committee believes that this notification will provide support to law enforcement efforts to identify and prosecute armed felons. It will enable law enforcement resources to be directed against convicted felons known to have broken the law by buying a handgun.

All reports received under this section must be destroyed within 90 days of being received if there is no evidence that the receipt of the handgun by the transferee was illegal.

This provision is new and does not create a waiting period.

COMMITTEE APPROVAL

On March 11, 1986, a quorum being present, the Committee on the Judiciary approved H.R. 4332 by a recorded vote of 35-0 with an amendment in the nature of a substitute.

* * * * *

ADDITIONAL VIEWS OF REPRESENTATIVE JACK BROOKS WHICH ARE JOINED BY REPRESENTATIVES MIKE SYNAR, RICK BOUCHER, HARLEY O. STAGGERS, JR., JOHN BRYANT, HAMILTON FISH, JR., CARLOS J. MOORHEAD, TOM KINDNESS, F. JAMES SENSENBRENNER, JR., BILL DANNEMEYER, AND HOWARD COBLE

The Judiciary Committee has provided the Full House and legislative vehicle which can provide a basis for meaningful reform of our nations firearms laws. We applaud this action and look forward to a full and open floor procedure that will allow us to consider all facets of the issues involved.

Many of us are supporters of a number of the concepts contained in H.R. 945, introduced by our former Judiciary Committee colleague, Mr. Volkmer of Missouri. Some of these concepts have been incorporated in H.R. 4332, others have not. These are issues which should be considered on the house floor. We intend to work with Mr. volkmer to insure that these issues are addressed in a workable fashion.

H.R. 4332 is a good basis upon which to build, but it should not be considered the final product. When H.R. 4332 is considered we expect a number of amendments to be offered. We intend to debate these amendments fully. It is with such open debate and consideration that we will truly arrive at firearms law reform.

Jack Brooks.
Mike Synar.
Rick Boucher.
Harley O. Staggers, Jr.
John Bryant.
Hamilton Fish, Jr.
Carlos J. Moorhead.
Tom Kindness.
F. James Sensenbrenner, Jr.
Bill Dannemeyer.
Howard Coble.

APPENDIX CONTAINING COMMITTEE AMENDMENT TO H.R. 4332

Strike out all after the enacting clause and insert in lieu thereof the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the "Federal Firearms Law Reform Act of 1986".

SEC. 2. PROHIBITION ON TRANSFER AND POSSESSION OF SILENCERS.

(a) Definition.—Section 921(a) of title 18, United States Code, is amended by adding at the end the following:

"(21) The terms 'silencer' and 'muffler' mean any device for silencing, muffling, or diminishing the report of a portable firearm, including any part or combination of parts designed or redesigned and intended for such use with a firearm.".

(b) Prohibition.—Section 922 of title 18, United States Code, is amended by adding at the end the following:

"(n)(1) Except as provided in paragraph (2), it shall be unlawful for any person to transfer or possess a silencer.

"(2) This subsection does not apply with respect to—

"(A) a transfer to or by, or possession by or under the authority of, the United States or any department or agency thereof or a State, or a department, agency, or political subdivision thereof; or

"(B) any lawful transfer or lawful possession of a silencer that was lawfully possessed before the date this subsection takes effect.".

(c) Conforming Amendments.—

(1) Section 921(a)(3) of title 18, United States Code, is amended by striking out "any firearm muffler or firearm silencer" and inserting "any muffler or silencer for a firearm" in lieu thereof.

(2) Section 5845(a)(7) of the National Firearms Act (26 U.S.C. 5845(a)(7) is amended to read as follows:

"(7) any silencer (as defined in section 921 of title 18, United States Code);".

(3) Sections 922(a)(4) and 922(b)(4) of title 18, United States Code, are each amended by striking out "(as defined in section 5845 of the Internal Revenue Code of 1954)," and inserting "silencer," in lieu thereof.

SEC. 3. LAWFUL INTERSTATE SALE OF LONG GUNS.

Subparagraph (A) of section 922(b)(3) of title 18, United States Code, is amended to read as follows: "(A) shall not apply to the sale or delivery of any rifle or shotgun to a resident of a State other than a State in which the licensee's place of business is located if the transferee meets in person with the transferor to accomplish the transfer, and the sale, delivery, and receipt fully comply with the legal conditions of sale in both such States (and any licensed manufacturer, importer or dealer shall be presumed, for purposes of this subparagraph, in the absence of evidence to the contrary, to have had actual knowledge of the State laws and published ordinances of both States),"

SEC. 4. UNLAWFUL SALE, POSSESSION, OR RECEIPT OF FIREARMS OR AMMUNITION.

(a) In General.—Section 922(g) of title 18, United States Code, is amended to read as follows:

"(g)(1) It shall be unlawful for any person—

"(A)(i) if such person is a licensee under this chapter, to sell or otherwise dispose of any firearm or ammunition to any other person, knowing or having reasonable cause to believe that such other person is unqualified; or

(ii) if such person is not such a licensee, to sell or otherwise dispose of any firearm or ammunition to any other person, knowing that such other person is unqualified;

"(B) to ship or transport any firearm or ammunition in interstate or foreign commerce, if such person is unqualified;

"(C) to receive any firearm or ammunition which has been shipped or transported in interstate or foreign commerce, if such person is unqualified; or

"(D) to receive, posses, or transport any firearm in or affecting interstate or foreign commerce, if—

"(i) such person is unqualified (unless such person is unqualified only because such person is under indictment for, or has been convicted in any court of, a crime punishable by imprisonment for a term exceeding 1 year); or

"(ii) in the course of such person's employment by another person, such person knows that other person is unqualified (unless such other person is unqualified only because such person is under indictment for, or has been convicted in any court of, a crime punishable by imprisonment for a term exceeding 1 year).

"(3) For purposes of paragraph (1), a person is unqualified if the person—

"(A) is under indictment for, or has been convicted in any court of, a crime punishable by imprisonment for a term exceeding 1 year;

"(B) is a fugitive from justice;

"(C) is an unlawful user of or addicted to any controlled substance (as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802));

"(D) has been adjudicated as a mental incompetent or committed to any mental institution;

"(E) has been discharged from the Armed Forces under dishonorable conditions;

"(F) has renounced that person's United States citizenship; or

"(G) is an alien illegally in the United States.".

(b) Conforming Repeal and Amendemnt.—

(1) Title VII of the Omnibus Crime Control and Safe Streets Act of 1968 (18 U.S.C. App. 1201 et seq.) is repealed.

(2) Section 923(d)(1)(B) of title 18, United States Code, is amended by striking out "and (h)".

SEC. 5. GUN SHOW SALES.

(a) In General.—Section 922(h) of title 18, United States Code, is amended to read as follows:

"(h) In any case not otherwise prohibited by this chapter, a licensed dealer may sell or otherwise dispose of a firearm to a person who does not appear in person at the licensee's business premises if such sale or disposition takes place during and at a temporary gun show or event sponsored by any national, State, or local organization, or affiliate of any such organization devoted to the collection, competitive use, or other sporting use of firearms, or an organization or association that sponsors events devoted to the collection, competitive use, or other sporting use of firearms and the location of such sale or disposition is in the State specified in the license of such licensee. Records of receipt and disposition of firearms transactions conducted at such temporary location shall include the location of the sale or disposition and shall be entered in the permanent records of the licensee and retained on the location specified on the license of such licensee. Any inspection or examination of inventory or records under this chapter by the Secretary at such temporary location shall be limited to inventory consisting of, or records relating to, firearms held or disposed at such temporary location. Nothing in this subsection shall authorize such licensee to conduct business in or from any motorized or towed vehicle.".

(b) CONFORMING AMENDMENT.—Section 923(a) of title 18, United States Code, is amended by inserting "(other than at a temporary location described in section 922(h) of this title)" after "each place".

SEC. 6. PROHIBITION ON IMPORTATION OF PARTS OF CERTAIN FIREARMS.

Section 922(l) of title 18, United States Code, is amended by adding at the end the following: "It shall be unlawful for any person knowingly to import into the United States the barrel of any firearm if the importation of that firearm is prohibited by this section.".

SEC. 7. ADMINISTRATIVE FLEXIBILITY FOR INVOKING LICENSE-RELATED PENALTIES AND OTHER LICENSING-RELATED MATTERS.

(a) RELEVANT LICENSE INFORMATION.—Section 923(a) of title 18, United States Code, is amended by striking out "such information" and inserting "only that information necessary to determine eligibility for licensing".

(b) ADDITIONAL LICENSE APPROVAL CRITERION.—Section 923(d)(1)(B) of title 18, United States Code, is amended by striking out the semicolon at the end and inserting in lieu thereof "and is not prohibited by applicable State law from engaging in conduct necessarily incident to business subject to license under this chapter;".

(c) AUTHORITY TO SUSPEND LICENSES.—

(1) Section 923(e) of title 18, United States Code, is amended by inserting "suspend or" before "revoke".

(2) Section 923(f) of title 18, United States Code, is amended—

(A) in paragraph (1)—

(i) by inserting "suspend or" before "revoked" each place it appears; and

(ii) by inserting "suspension or" before "revocation";

(B) in paragraph (2)—

(i) by striking out "revokes, a license," and inserting in lieu thereof "suspends or revokes a license";

(ii) by striking out "his denial or revocation" and inserting in lieu thereof "that action"; and

(iii) in the second sentence, by inserting "suspension or" before "revocation" each place it appears; and

(C) in paragraph (3)—

(i) in the first sentence, by striking out "his decision to deny an application or revoke a license" and inserting in lieu thereof "the action reviewed";

(ii) in the second sentence, by striking out "denial or revocation" and inserting in lieu thereof "action"; and

(iii) in the last sentence, by inserting "suspend or" before "revoke".

(d) LIMITATION ON FREQUENCY OF COMPLIANCE INSPECTIONS.—Section

923(g) of title 18, United States Code, is amended by inserting "The Secretary may inspect the inventory and records of a licensee for the purpose of ensuring compliance with the recordkeeping requirements of this chapter not more than three times during any 18-month period, unless the Secretary or the Director of the Bureau of Alcohol, Tobacco, and Firearms approves such inspection" before "The Secretary".

SEC. 8. MODIFICATION OF PENALTY PROVISIONS AND REENACTMENT OF ARMED CAREER CRIMINAL PROVISIONS.

SECTION 924(A) OF TITLE 18, UNITED STATES CODE, IS AMENDED—

(1) BY INSERTING "(1)" AFTER "(A)";

(2) by striking out "Whoever violates" and inserting "Except as otherwise provided in this subsection, whoever knowingly engages in conduct that is a violation of" in lieu thereof; and

(3) by adding at the end the following:

"(2) Whoever knowingly engages in conduct that is a violation of section 922(b)(5), 922(m), or 923(h) of this title and has not been previously convicted of a violation of such section shall be fined under this title or imprisoned not more than one year, or both, rather than as provided under paragraph (1) of this subsection.

"(3) Any person who knowingly engages in conduct that is a violation of section 922(g)(1)(D) of this title and has been convicted on 3 previous occasions of robbery, burglary, or both—

"(A) shall be fined under this title and imprisoned not less than 15 years;

"(B) notwithstanding any other provision of law, shall not be granted any suspected or probationary sentence with respect to such violation; and

"(C) shall not be eligible for parole from any sentence imposed with respect to such violation.

"(4) As used in paragraph (3)—

"(A) the term 'robbery' means any felony consisting of the taking of the property of another from the person or presence of another by force or violence, or by threatening or placing another person in fear that any person will imminently be subjected to bodily harm; and

"(B) the term 'burglary' means any felony consisting of entering or remaining surreptitiously within a building that is the property of another, with intent to engage in conduct constituting a Federal or State offense.

"(5) As used in paragraph (4), the term 'felony' means any offense punishable by imprisonment for a term exceeding one year, but does not include any offense (other than one involving a firearm or explosive) classified as a misdemeanor under the law of a State and punishable by a term of imprisonment of two years or less".

SEC. 9. RECORDKEEPING AND REPORTING AMENDMENTS.

(A) ELIMINATION OF CERTAIN AMMUNITION RECORDKEEPING.—Section 923(g) of title 18, United States Code, is amended—

(1) by striking out "Each" and inserting "(1) Except as provided in paragraph (2), each" in lieu thereof; and

(2) by adding at the end the following new paragraph:

"(2) The Secretary shall not require the keeping of any records under this chapter with respect to the sale of ammunition (other than armor-piercing ammunition, as such term is defined in section 929 of this title) in transactions involving less than 1,000 rounds.".

(b) Codification of Existing Regulation Requiring Reports of Multiple Firearm Sales.—Section 923(g) of title 18, United States Code, is amended by inserting after the second sentence the following: "Each licensee shall submit such a report to the Secretary with respect to each sale or other dispositon to an unlicensed person by that licensee, in 1 or more transactions during any period of 5 consecutive business days, of any combination of pistols and revolvers totaling 2 or more. Such report with respect to such sale or disposition shall be forwarded to the office specified by the Secretary not later than the close of business on the day such sale or other disposition is completed.".

SEC. 10. IMPOSITION OF ADDITIONAL PENALTIES FOR USING OR CARRYING A FIREARM OR ARMOR-PIERCING AMMUNITION IN CONNECTION WITH FELONY INVOLVING DRUG TRAFFICKING.

(a) Firearm.—Section 924(c) of title 18, United States Code, is amended—

(1) by inserting "(1)" before "Whoever,";

(2) by striking out "violence," each place it appears and inserting in lieu thereof "violence, or drug trafficking crime,";

(3) by inserting "or drug trafficking crime" before "in which the firearm was used or carried."; and

(4) by adding at the end the following:

"(2) As used in this subsection, the term 'drug trafficking crime' means any felony violation of Federal law involving the distribution, manufacture, or importation of any controlled substance (as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802)).".

(b) Armor-Piercing Ammunition.—Section 929(a) of title 18, United States Code, is amended—

(1) by inserting "(1)" before "Whoever,";

(2) by striking out "violence" each place it appears and inserting in lieu thereof "violence or drug trafficking crime,"; and

(3) by adding at the end the following:

"(2) As used in this subsection, the term 'drug trafficking crime' means any felony violation of Federal law involving the distribution, manufacture, or importation of any controlled substance (as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802)).".

SEC. 11. ENHANCED PENALTY FOR MACHINEGUN USE IN CRIME AND OTHER MACHINEGUN-RELATED MATTERS.

(a) Enhanced Penalty.—Section 924(c) of title 18, United States Code, is amended—

(1) in the first sentence, by striking out the period at the end and inserting in lieu thereof ", and if the firearm is a machinegun, to imprisonment for 10 years."; and

(2) in the second sentence, by striking out the period at the end and inserting in lieu thereof ", and if the firearm is a machinegun, to imprisonment for 20 years."

(b) Definition.—

(1) Section 921(a) of title 18, United States Code, is amended by adding after the paragraph added by section 2(a) the following:

"(22) The term 'machinegun' has the meaning given such term in section 5845(b) of the National Firearms Act (26 U.S.C. 5845(b)).".

(2) Section 5845(b) of the National Firearms Act (26 U.S.C. 5845(b)) is amended by inserting "part or" before "combination of parts designed and intended".

(c) Conforming Amendment.—Section 925(d)(2) of title 18 United States Code, is amended by striking out "as defined in section 5845(b) of the Internal Revenue Code of 1954".

SEC. 12. LIMITATION ON FORFEITURE.

Section 924(d) of title 18, United States Code, is amended—

(1) by inserting "felony" before "violation" each place it appears; and

(2) by striking out "or any rule or regulation promulgated thereunder".

SEC. 13. BROADENED RELIEF FROM DISABILITIES.

Section 925(c) of title 18, United States Code, is amended—

(1) by striking out "has been convicted of a crime punishable" and all that follows through "National Firearms Act)" and inserting in lieu thereof "is prohibited by Federal law from acquiring, receiving, transferring, shipping, transporting, or possessing firearms or ammunition";

(2) by inserting "transportation," after "shipment,";

(3) by striking out "and incurred by reason of such conviction"; and

(4) by adding at the end the following: "If the Secretary determines that relief from disabilities, incurred by reason of a conviction under State law and imposed by Federal laws with respect to the acquisition, receipt, transfer, shipment, or possession of firearms, would be consistent with the purposes of this chapter when such expungement or elimination occurs under any State law regarding the expungement of criminal convictions, the Secretary may declare that all persons obtaining relief under such State law are relieved from such disabilities."

SEC. 14. INTERSTATE TRANSPORT OF RIFLES AND SHOTGUNS

Section 927 of title 18, United States Code, is amended—

(1) by inserting "(a)" before "No"; and

(2) by adding at the end the following:

"(b) Notwithstanding any provision of State law or of any published ordinance to the contrary, any individual may transport any secured shotgun or secured rifle from such individual's place of origin to any destination State if—

"(1) such transport is—

"(A) incident to the change of the individual's State of residence; or

"(B) for the purpose of lawful participation in, or returning from lawful participation in—

"(i) hunting;

"(ii) a shooting match or contest; or

"(iii) any other lawful sporting activity; and

"(2) the individual may lawfully transport and possess such shotgun or rifle—

"(A) in the individual's place of origin, the destination State, and the destination political subdivision of the destination State; and

"(B) under Federal law.

"(c) For purposes of subsection (b)—

"(1) a rifle or shotgun is secured if the rifle or shotgun—

"(A) is enclosed or cased;

"(B) is not readily accessible; and

"(C) is not loaded with ammunition; and

"(2) the term 'place of origin' means—

"(A) in the case of a change of residence, the State and political subdivision thereof from which residence is changed; and

"(B) in any other case, the State and political subdivision thereof in which the possession or transport of the rifle or shotgun begins.".

SEC. 15. RECORD CHECK FOR CRIMINAL CONVICTIONS AND OTHER DISQUALIFICATIONS FOR PURCHASE OF HANDGUNS.

(a) DEFINITION.—Section 921(a) of title 18, United States Code, is amended by adding after the paragraph added by section 11(b) the following:

"(23) The term 'handgun' means a firearm which has a short stock and is designed to be held and fired by the use of a single hand.".

(b) PROHIBITION.—SECTION 922(D) OF TITLE 18, UNITED STATES CODE, IS AMENDED TO READ AS FOLLOWS:

"(d)(1) It shall be unlawful for a licensed importer, licensed manufacturer, or licensed dealer to sell, deliver, or otherwise transfer a handgun to an individual who is not licensed under section 923 unless such importer, manufacturer, or dealer promptly sends by registered or certified mail (return receipt requested), a copy of the documentation of the transaction required under this chapter, in a form prescribed by the Secretary—

"(A) to the chief law enforcement officer of the place of residence of the transferee notifying such officer of the transaction; and

"(B) to the Federal Bureau of Investigation which shall—

"(i) examine Federal official records which may reveal any circumstance making illegal the receipt or possession of a handgun by the transferee; and

"(ii) report to the chief law enforcement officer of the place of residence of the transferee if any such records show any such circumstance.

"(2) The chief law enforcement officer of the place of residence of the transferee and the Federal Bureau of Investigation shall each destroy each report received under this section from any licensee concerning any transferee, within 90 days after the date such report is received, if such report does not indicate any circumstance making illegal the receipt or possession of handgun by the transferee.".

VI

Announcements

Subpart A—Administrative and Procedural Practice Regulations

26 CFR 301.6621: Determination of Rate of Interest

Adjusted interest rate; underpayments and overpayments. The adjusted rate of interest on underpayments and overpayments, as determined under the provisions of section 6621(b) of the Code, will be 9 percent effective July 1, 1986.

Rev. Rul. 86-59

Section 6621(b) of the Internal Revenue Code provides for semiannual adjustment of the interest rate established under that section. Section 6621(b)(1) requires that these adjustments in the rate be established by October 15 and April 15, and be based on the average prime interest rate for the six-month period ending the previous September 30, or March 31, respectively.

The Board of Governors of the Federal Reserve System has determined that the average prime interest rate for the six-month period ending March 31, 1986, was 9.43 percent. That rate, rounded to the nearest full percent, is 9 percent, a change of 1 percent from the rate of 10 percent in effect under the last determination made by the Internal Revenue Service. *See* Rev. Rul. 85-169, 1985-44 I.R.B. 15. Accordingly, an adjusted rate of interest of 9 percent is established under section 6621(b). The adjusted rate will take effect on July 1, 1986, and will apply to amounts outstanding on that date or arising thereafter.

Daily rates for compound interest for 9 percent were published in Table 15 of Rev. Proc. 83-7, 1983-1 C.B. 583, 598.

Compound interest rates for prior periods are set forth in the following table:

PERIOD	RATE	DAILY RATE TABLE IN 1983-1 C.B.
January 1, 1983-June 30, 1983	16%	Table 22, pg. 605
July 1, 1983-December 31, 1983	11%	Table 17, pg. 600
January 1, 1984-June 30, 1984	11%	Table 41, pg. 625
July 1, 1984-December 31, 1984	11%	Tabie 41, pg. 625
January 1, 1985-June 30, 1985	13%	Table 19, pg. 602
July 1, 1985-December 31, 1985	11%	Table 17, pg. 600
January 1, 1986-June 30, 1986	10%	Table 16, pg. 599

V

Administrative Matters

Announcement 86-33

Major Disaster Areas Proclaimed by the President

The President has determined that certain areas of the United States were adversely affected by disasters of sufficient magnitude to warrant Federal assistance under the Disaster Relief Act of 1974. The specific areas adversely affected as identified by the Administrator, Federal Emergency Management Agency (FEMA) are listed below.

Persons in the affected areas holding for sale alcoholic beverages, cigars, cigarettes, cigarette papers or tubes, which were lost, rendered unmarketable, or condemned by a duly authorized official by reason of these disasters may be paid an amount equal to the internal revenue taxes and customs duties paid on such products, as provided in 26 U.S.C. 5064 and 5708. Claims for such payments should be filed with the Regional Director (Compliance), Bureau of Alcohol, Tobacco and Firearms, for the ATF region in which the alcoholic beverages, cigarettes, etc., were held for sale. Claims may be allowed only if filed within six months after the date the FEMA identifies the specific disaster area.

WISCONSIN—Declared August 14, 1986

Type of Disaster: severe storms and floods

COUNTY: Milwaukee

Announcement 86-34

Offer in Compromise

An offer in compromise of $400,000 was accepted by ATF from Anheuser-Busch, Inc., Los Angeles (Van Nuys), California for violations of 26 U.S.C. 5051(a)(3). The proponent, a manufacturer of malt beverage products, overfilled cans and bottles of beer in excess of the 0.5 percent tolerance established by Revenue Ruling 71-227. Also, proponent failed to timely pay tax on such excess at the time of removal for consumption or sale.

Announcement 86-35

Offer in Compromise

ATF has accepted an offer in compromise of $10,000 from Villa Bianchi Winery, Kerman, California. The offer was accepted to compromise civil liabilities incurred by violations of 26 U.S.C. 5005(e), 5172, 5178, 5211, 5207, 5362, 5357, 5367, 5368, 5370. The proponent incurred numerous operational and recordkeeping violations which included: (1) failure to maintain Daily Storage Records and Storage Summary Records; (2) failure to timely prepare work orders; (3) failure to maintain Daily Production Record of Operations; (4) operation of equipment without authorization; (5) failure to use Form 703 for wine transferred to adjacent distilled spirits plant; and (6) failure to properly maintain Monthly Report of Wine Cellar operations, Form 702 (5120.17).

Announcement 86-36

Offer in Compromise

ATF has accepted an offer in compromise of $500 from Robert Bryant, Warren, Michigan. The proponent violated 26 U.S.C. 5111(a) by operating as a wholesale liquor dealer without payment of special tax.

Announcement 86-37

Offer in Compromise

ATF has accepted an offer in compromise of $2,000 from Bound Beverage, Inc., Cornwells Heights, Pennsylvania. The proponent was in violation of 27 U.S.C. 205(b)(3). Investigation disclosed that Bound Beverage sold equipment to 13 retailers at a discount to induce them to purchase Bound Beverage products to the exclusion of others in interstate or foreign commerce.

Announcement 86-38

Offer in Compromise

ATF has accepted an offer in compromise of $5,000 from Trigo Corporation, Toa Baja, Puerto Rico. This offer was accepted for violations of 26 U.S.C. 5061 for failure to timely file and pay taxes and maintain sufficient bond coverage on distilled spirits shipped to the United States.

Announcement 86-39

Offer in Compromise

ATF has accepted an offer in compromise of $1,000 from Erie Beer Company, Erie, Pennsylvania. The offer was accepted to compromise liabilities arising from violations of 27 U.S.C. 205(b)(3). The proponent furnished free beer and equipment to retailers as inducements to purchase malt beverages to the exclusion of products sold by competing wholesale dealers.

Announcement 85-40

Offer in Compromise

ATF has accepted an offer in compromise of $500 from Paul Antonelli, St. Clair Shores, Michigan. Mr. Antonelli is president of a wholesale liquor dealer business that was operating without paying special tax, in violation of 26 U.S.C. 5111(a).

Announcement 86-41

Offer Compromise

ATF has accepted an offer in compromise of $20,000 from Tri-L Distributors, Inc., Tustin, California. The offer was accepted in compromise of liabilities arising from violations of 26 U.S.C. 5001, 5006, 5171, 5172, 5180, 5201, 5204, 5205, 5206, 5207, 5213, 5214, and 27 U.S.C. 205(e), in that they failed to: (1) properly compute, report and timely pay taxes, (2) maintain the plant registration accurately, (3) have required signs placed at premises, (4) maintain operations in accordance with regulations, (5) insure accuracy of scales and accurately gauge spirits, (6) properly affix and account for distilled spirits stamps, (7) mark or identify containers of distilled spirits, (8) keep and maintain accurate records required by regulation, (9) properly withdraw distilled spiritis, (10) properly return spirits to bond, and (11) follow approved formulas and properly label products.

Announcement 86-42

Offer in Compromise

ATF has found The American Tobacco Company, Reidsville, North Carolina, in violation of 26 U.S.C. 5703(b) for removing tobacco products without timely payment of tax. An offer of $5,000 was accepted to compromise the penalty for failure to make a timely deposit, as prescribed in 26 U.S.C. 6656(a).

Announcement 86-43

Offer in Compromise

ATF has accepted an offer in compromise of $2,000 from Nappi Distributors, Inc., Portland, Maine. The offer was accepted to compromise liabilities arising from violations of 27 U.S.C. 205(b)(4). The proponent induced a retailer to purchase his beer to the exclusion of other beer sold in interstate commerce, by paying the retailer for advertising space at the retailer's baseball stadium.

Announcement 86-44

Offer in Compromise

An offer in compromise of $67,000 was accepted by ATF from Distillers Co., Ltd., Stamford, Connecticut. The proponent was in violation of 26 U.S.C. 5061(a) for filing its distilled spirits tax return one day late.

Announcement 86-45

Offer in Compromise

An offer in compromise of $6,000 was accepted from Brockton Wholesale Beverage Corporation, d/b/a Premium Beverage Company, Worcester, Massachusetts. The permittee induced retailers to purchase Paisley Scotch by offering and/or giving TV sets to employees of retailers. This inducement resulted in competitors being excluded from selling the product in interstate commerce, a violation of 27 U.S.C. 205(c)(2).

Announcement 86-46

Supreme Court Decision

CT. D. 24

SUPREME COURT OF THE UNITED STATES

No. 84-1904

United States Department
of the Treasury,
Bureau of Alcohol, Tobacco
and Firearms, Appellant
v.
Galioto

On appeal from the United States District Court for the District of New Jersey

June 27, 1986

Syllabus

Appellee, who had been involuntarily committed to a mental hospital for a period of several weeks in 1971, was unable to purchase a firearm from a store in 1982 because of the provisions of 18 U.S.C. § 922(d) prohibiting sales of firearms to such persons. Section 922(d) and other federal statutes prohibiting persons who have been committed to mental institutions from possessing, receiving, or transporting firearms also apply to felons. However, under 18 U.S.C. § 925(c), certain felons could apply to the Bureau of Alcohol, Tobacco and Firearms from administrative relief from the disabilities imposed by federal firearms laws, but no such relief was permitted for former mental patients. After unsuccessfully seeking a special exemption from the Bureau, appellee brought suit in Federal District Court, challenging the constitutionality of the firearms legislation. The court held that the statutory scheme was unconstitutional as violating equal protection principles because there was no rational basis for singling out mental patients for permanent disabled status, particularly as compared to convicts. The court also concluded that the statutory scheme unconstitutionally created an "irrebuttable presumption" that one who has been committed, no matter what the circumstances, is forever mentally ill and dangerous.

Held: The equal protection and "irrebuttable presumption" issues are now moot because, after this Court noted probable jurisdiction over this appeal and heard arguments, Congress amended § 925(c) to afford the administrative remedy contained therein to former mental patients ineligible to purchase firearms. Since appellee's complaint appears to raise other issues best addressed in the first instance by the District Court, the case is remanded for further proceedings. Pp. 3-4.

602 F. Supp. 682, vacated and remanded.

Burger, C.J., delivered the opinion for a unanimous Court.

Chief Justice Burger delivered the opinion of the Court.

We noted probable jurisdiction to decide whether Congress may, consistent with the Fifth Amendment, forbid all involuntarily committed former mental patients to purchase firearms while permitting some felons to do so.

In 1982 appellee attempted to purchase a firearm at Ray's Sport Shop in North Plainfield, New Jersey. The sport shop gave appellee a standard questionnaire, which asked *inter alia:*

"Have you ever been adjudicated mentally defective or have you ever been committed to a mental institution?" Appellee had been involunatrily committed to a mental hospital for a period of several weeks in 1971, and accordingly answered "yes" to this question. The store then refused to sell him a gun by reason of 18 U.S.C. § 922(d)(4), which makes it unlawful for a licensed dealer in firearms "to sell . . . any firearm . . . to any person knowing or having reasonable cause to believe that such person . . . has been adjudicated as a mental defective or had been committed to any mental institution." Federal firearms laws also forbid "any person . . . who has been adjudicated as a mental defective or who has been committed to a mental institution . . . to ship or transport any firearm or ammunition in interstate or foreign commerce," 18 U.S.C. § 922(g), or to "receive any firearm or ammunition which has been shipped or transported in interestate or foreign commerce," § 922(h). Partially overlapping provisions of 18 U.S.C. App. §§ 1202(a)(1) and (3) prohibit any person who has "been adjudged by a court . . . of being mentally incompetent" from receiving, possessing or transporting firearms.

After unsuccessfully seeking a special exemption from the Bureau of Alcohol, Tobacco, and Firearms, appellee brought suit in the United States District Court for the District of New Jersey, challenging the constitutionality of the firearms legislation. The District Court concluded that those portions of the federal firearms statutes that deprived appellee of his ability to purchase a firearm were constitutionally infirm. 602 F. Supp. 682, 683 (1985). Both felons and persons who have been committed to mental institutions, *inter alia*, are subject to the firearms disabilities contained in 18 U.S.C. § 922(d). Under 18 U.S.C. § 925(c), however, felons who have committed crimes not involving firearms may apply to the Bureau for administrative relief from these disabilities. No such relief is permitted for former mental patients.

Section 925(c) provides in relevant part:

> "A person who has been convicted for a crime punishable by imprisonment for a term exceeding one year (other than a crime involving the use of a firearm or other weapon or a violation of this chapter or of the National Firearms Act) may make application to the Secretary for relief from the disabilities imposed by Federal laws with respect to the acquisition, receipt, transfer, shipment, or possession of firearms and incurred by reason of such conviction, and the Secretary may grant such relief if it is established to his satisfaction that the circumstances regarding the conviction, and the applicant's record and reputation, are such that the applicant will not be likely to act in a manner dangerous to public safety and that the granting of the relief would not be contrary to the public interest."

The District Court held that this scheme violated equal protection principles because, in its view, "[t]here is no rational basis for thus singling out mental patients for permanent disabled status, particularly as compared to convicts." 602 F. Supp., at 689. The court also concluded that the statutory scheme was unconstitutional because it "in effect creates an irrebuttable presumption that one who has been committed, no matter the circumstances, is forever mentally ill and dangerous." *Id.*, at 690. We noted probable jurisdiction over the Government's appeal, and the case was argued on March 26, 1986.

Meanwhile, Congress came to the conclusion, as a matter of legislative policy, that the firearms statutes should be redrafted. On May 19, 1986, while this case was under consideration here, the President signed into law Pub. L. 99-308, 100 Stat. 449. Section 105 of the statute amends the provision providing for administrative relief from firearms disabilities, 18 U.S.C. § 925(c), by striking out the language limiting the provision to certain felons and changing the statute to read that any person who "is prohibited from possessing, shipping, transporting, or receiving firearms or ammunition" may apply to the Secretary of the Treasury for relief. Section 110 of the statute provides that the amendment made by § 105 "shall be applicable to any action, petition, or appellate proceeding pending on the date of the enactment of this Act."

This enactment significantly alters the posture of this case. The new statutory scheme permits the Secretary to grant relief in some circumstances to former involuntarily committed mental patients such as appellee. The new approach affords an administrative remedy to former mental patients like that Congress provided for others *prima facie* ineligible to purchase firearms. Thus, it can no longer be contended that such persons have been "singled out." Also, no "irrebuttable presumption" now exists since a hearing is afforded to anyone subject to firearms disabilities. Accordingly, the equal protection and "irrebuttable presumption" issues idscussed by the District Court are now moot. See *United Building and Construction Trades Council of Camden County and Vicinity* v. *Mayor and Council of Camden*, 465 U.S. 208, 213 (1984).

In such circumstances, "it is the duty of the appellate court to set aside the decree below . . . ." *Duke Power Co.* v. *Greenwood County*, 299 U.S. 259, 267 (1936); see also *United States* v. *Munsingwear, Inc.*, 340 U.S. 36, 39-40 (1950). We therefore vacate the judgment of the District Court. However, since appellee's complaint appears to raise other issues best addressed in the first instance by the District Court, we also remand the case for further proceedings consistent with this opinion.

Vacated and remanded.

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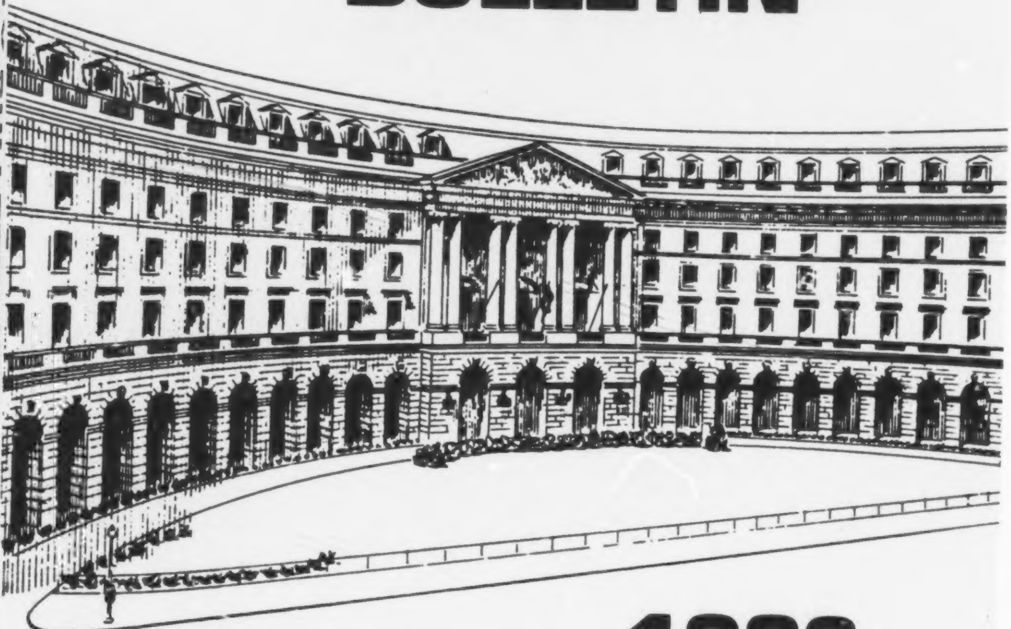

1986

VOLUME 4

DEPARTMENT OF TREASURY

T70.7:

QUARTERLY BULLETIN

Bureau of Alcohol, Tobacco and Firearms

Department of the Treasury

CONTAINS:

Treasury Decisions, Rulings, and Procedural and Administrative Matters Concerning Alcohol, Tobacco, Firearms, and Explosives

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For sale by the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402. Single copy price: $2.75 (domestic) and $3.44 (foreign). Subscription price: $15.00 (domestic) and $18.75 (foreign).

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Preface

The Alcohol, Tobacco and Firearms Quarterly Bulletin is the authoritative instrument of the Bureau for announcing official rulings and procedures, and for publishing Treasury decisions, legislation, administrative matters, and other items of general interest. It incorporates, into one publication, matters of the Bureau which are of public record.

The Bureau publishes rulings and procedures to promote uniform application of the laws and regulations it administers. Rulings interpret the requirements of laws and regulations and apply retroactively unless otherwise indicated; whereas, procedures establish methods for performing operations to comply with such law and regulations.

Rulings and procedures reported in the Bulletin do not have the force and effect of Treasury Department regulations but they may be used as precedents. In applying published rulings and procedures, the effect of subsequent legislation, regulations, court decisions, rulings, and procedures must be considered. Concerned parties are cautioned against reaching the same conclusions in other cases unless the facts and circumstances are substantially the same.

Definitions

Rulings and Procedures that have an effect on previous rulings or procedures use the following defined terms to describe the effect:

AMPLIFIED is used in a situation where no change is being made in a prior published position, but the prior position is being extended to apply to a variation of the fact situation as set forth in the new ruling. Thus, if an earlier ruling held that a principal applied to A, and the new ruling holds that the same principal also applies to B, the earlier ruling is amplified.

CLARIFIED is used in a situation where the language in a prior ruling is being made clear because the language has caused, or may cause, some confusion. It is not used where a position in a prior ruling is being changed.

DECLARED OBSOLETE is used in a situation where a previously published ruling is not considered determinative with respect to future transactions. This term is most commonly used in a ruling that lists previously published rulings that are declared obsolete because of changes in law or regulations. A ruling may also be declared obsolete because its substance has been included in regulations subsequently adopted.

MODIFIED is used in a situation where the substance of a previously published position is being changed. Thus, if a prior ruling held that a principle applied to A but not to B, but the new ruling holds that it applies to both A and B, the prior ruling is modified.

REVOKED is used in a situation where the position in the previously published ruling is not correct and the correct position is being stated in the new ruling. Rulings which have been revoked have no further effect.

SUPERSEDED is used in a variety of situations. The term may be used where the new ruling amplifies a prior ruling *if* both the position taken in the prior ruling and the position as amplified are contained in the text of the new ruling. The term may be similarly used where the new ruling clarifies or modifies a prior ruling. The term may also be used where, for the purpose of updating references, the new ruling does nothing more than restate the substance and situation of a prior ruling. For example, a ruling issued under former statutes and regulations (e.g. the 1939 Code - 26 CFR Part 225) may be reissued under the current statutes and regulations (e.g. the 1954 Code - 27 CFR Part 201). Lastly, the term may be used when it is desired to republish in a single ruling a series of situations, names, etc., that were previously published over a period of time in separate rulings.

SUPPLEMENTED is used in situations in which a list, such as a list of curios and relics, is published in a ruling and that list is expanded by adding further items in subsequent rulings. After the original ruling has been supplemented several times, a new ruling may be published that includes the list in the original ruling and the additions, and supersedes all prior rulings in the series.

ABBREVIATIONS:

The following abbreviations appear in material published in the Bulletin:

A.B.C. etc. – The name of individuals
ATF – Bureau of Alcohol, Tobacco and Firearms
ATFQB – Alcohol, Tobacco and Firearms Quarterly Bulletin
ATF Proc. – ATF Procedure
ATF Rul. – ATF Ruling
C.B. – Cumulative Bulletin
Ct.D. – Court Decision
CFR – Code of Federal Regulations
D.O. – Delegation Order
E.O. – Executive Order
FAA Act – Federal Alcohol Administration Act
F.R. – Federal Register
M.N.X.Y.Z. etc. – The names of corporations, places and businesses, according to context
Pub. L. – Public Law
Rev. Proc. – Revenue Procedure
Rev. Rul. – Revenue Ruling
Stat. – Statutes at Large
T.D. – Treasury Decision
T.D.O. – Treasury Department Order
U.S.C. – United States Code
x and y – used to represent certain number and when used with the world "dollars" represent sums of money.

Treasury Decisions

Subpart A—ALCOHOL

TITLE 27—ALCOHOL, TOBACCO PRODUCTS AND FIREARMS—CHAPTER I—BUREAU OF ALCOHOL, TOBACCO AND FIREARMS, DEPARTMENT OF THE TREASURY.

Implementation of the Consolidated Omnibus Budget Reconciliation Act of 1985; Chewing Tobacco and Snuff

T.D. ATF-232; Correction

27 CFR Part 270

AGENCY: Bureau of Alcohol, Tobacco and Firearms (ATF), Treasury.

ACTION: Temporary rule (treasury decision); correction.

SUMMARY: This document corrects an error made in FR Doc. 86-17441, published in the Federal Register on August 5, 1986, at 51 FR 28078, which implemented Title XIII Subtitle B of the Consolidated Omnibus Budget Reconciliation Act of 1985 (Pub. L. 99-272, 100 Stat. 311).

FOR FURTHER INFORMATION CONTACT: Nancy Cook or Clifford A. Mullen, Distilled Spirits and Tobacco Branch, Bureau of Alcohol, Tobacco and Firearms, Room 6235, Ariel Rios Federal Building, 1200 Pennsylvania Avenue, NW., Washington, DC 20226; (202) 566-7531.

SUPPLEMENTARY INFORMATION: In the middle column of page 28081, Paragraph 29, § 270.162 was inadvertently amended and should be revised to read as follows:

§ 270.162 Semimonthly tax return.

Every manufacturer of tabacco products shall file, for each of his factories, a semimonthly tax return on Form 5000.24 for each return period, including any period during which a manufacturer begins or discontinues business. The return shall be filed with the district director or the director of the service center in accordance with the instructions on the form. The manufacturer shall file the return at the time specified in § 270.165 regardless of whether tobacco products are removed or whether tax is due for that particular return period. However, when the manufacturer requests by letter and the regional director (compliance) grants specific authorization, the manufacturer need not during the term of such authorization file a tax return for which tax is not due or payable.

Approved: September 24, 1986

Stephen E. Higgins,

Director.

(Filed by the Office of the Federal Register on October 2, 1986, 8:45 am and published in the Federal Register for October 3, 1986, 51 F.R. 35353)

TITLE 27—ALCOHOL, TOBACCO
PRODUCTS AND FIREARMS—
CHAPTER I—BUREAU OF
ALCOHOL, TOBACCO AND
FIREARMS, DEPARTMENT OF
THE TREASURY

Establishment of Arkansas Mountain Viticultural Area

T.D. ATF—235

27 CFR Part 9

AGENCY: Bureau of Alcohol, Tobacco and Firearms, Department of the Treasury.

ACTION: Final rule; Treasury decision.

SUMMARY: The Bureau of Alcohol, Tobacco and Firearms (ATF) has decided to establish a viticultural area in the State of Arkansas to be known as "Arkansas Mountain." This decision is the result of a petition submitted by Mr. Al Wiederkehr, a winery owner and grape grower in the area. The establishment of viticultural areas and the subsequent use of viticultural area names in wine labeling and advertising enables winemakers to label wines more precisely and helps consumers to better identify the wines they purchase.

EFFECTIVE DATE: October 27, 1986.

FOR FURTHER INFORMATION CONTACT: Mr. Steve Simon, FAA, Wine and Beer Branch, Bureau of Alcohol, Tobacco and Firearms, 1200 Pennsylvania Avenue NW, Washington, DC 20226 (202-566-7626).

SUPPLEMENTARY INFORMATION:

Background

ATF regulations in 27 CFR Part 4 provide for the establishment of definite viticultural areas. The regulations also allow the name of an approved viticultural area to be used as an appellation of origin on wine labels and i wine advertisements.

Part 9 of 27 CFR provides for the listing of approved American viticultural areas, the names of which may be used as appellations of origin.

Section 4.25(e)(1), Title 27 CFR, defines an American viticultural area as a delimited grape-growing region distinguishable by geographical features. Section 4.25a(e)(2) outlines the procedures for proposing an American viticultural area. Any interested person may petition ATF to establish a grape-growing region as a viticultural area.

Petition

ATF received a petition from Mr. Al Wiederkehr, Chairman of the Board and Chief Executive Officer of Wiederkehr Wine Cellars, Inc., proposing an area in northwestern Arkansas as a viticultural area to be known as "Arkansas Mountain." The area contains about 4,500 square miles. Within the area, approximately 1,200 acres are currently planted to grapes. The area is located in the mountainous region of Arkansas, both north and south of the Arkansas River. There are six bonded wineries or bonded wine cellars authorized to operate within the area.

Notice of Proposed Rulemaking

In response to the petition, ATF published a notice of proposed rulemaking, Notice No. 588, in the **Federal Register** on Monday, April 7, 1986 (51 FR 11753). That notice proposed establishment of the "Arkansas Mountain" viticultural area and solicited public comment concerning the proposal.

No comments have been received. Therefore, this document establishes the "Arkansas Mountain" viticultural area with boundaries as proposed in Notice No. 588.

Name of the Area

The following evidence, submitted by the petitioner, establishes that the new viticultural area is known by the name of "Arkansas Mountain":

(a) The name "Arkansas Mountain" has been used on wine labels by the petitioner to designate wines from this area since 1974.

(b) Published descriptions of the area have referred to it as the "Arkansas Mountains." For example, the "Holiday Inn Magazine for Travelers," in an October 1969 article entitled "Vineyard Village," stated: "Finding the grapeladen vineyards, a colorful chalet with gay window boxes, and huge wine cellars in the Arkansas mountains is an unexpected adventure to most tourists. Yet the colony has been there for more than 80 years." Further, the Rev. Placidus Oechsle, in his *Historical Sketch of the Congregation of Our Lady of Perpetual Help* (1930), wrote as follows: "The Baron . . . praised the thrifty and industrious settlers of Teutonic blood, who had made in a few years a garden spot of a wilderness. They had selected the Arkansas Mountains . . . to become their home."

(c) The origin of the term "Arkansas Mountain" was described by the petitioner as follows: "Dr. John L. Ferguson states the following information in reference to the Arkansas Mountains. The name Arkansas came before Ozark or 'Aux Arcs' which means of the Arkansas or from among the Arkansas. The name Arkansas comes from the Arkansas Indians who lived in the area. The Arkansas River was given its name to indicate that it was the river of the Arkansas (Indians); therefore the Arkansas River. The mountains in the vicinity of the Arkansas River were also given that name to mean also the mountains of the Arkansas (Indians); therefore the Arkansas Mountains."

Geography of the Area

The following evidence establishes that the new viticultural area is distinguished geographically from its surrounding areas:

(a) To the north and west, the area is distinguished from neighboring areas on the basis of mean winter minimum temperature. The petitioner submitted data collected over 50 years from 42 locations (7 inside the area and 35 outside of it). The data showed that locations to the north and west of the area regularly experience significantly colder mean winter minimum temperatures. According to Professor Justin R. Morris of the University of Arkansas Division of Agriculture, this distinction "is due to the effects of the mountains." The protective effects of the Arkansas mountains were described by the petitioner, quoting at length from *Natural Resources of the State of Arkansas* (1869) by James M. Lewis. In that book, Mr. Lewis claimed that protection from cold northern weather is due to the fact that the Ozark and Ouachita Mountains range east and west, rather than north and south (as within the Appalachians, for example). Consequently, Mr. Lewis said, the mountains provide shelter from violent winds and sudden changes in temperature coming from the north.

(b) To the east, the data is ambiguous as to the existence of a temperature difference as described above. However, the eastern boundary does correspond approximately to a topographical change, where the Boston and Ouachita Mountains begin their descent to the alluvial plain of the Mississippi River. This topographical change is reflected in a change in the character of the soil; for instance, the Leadville-Taft soils begin to occur much more frequently; and, within the Linker and Mountainburg soils, there is an increasing predominance of the

Linker variety and a corresponding drop-off in the Mountainburg.

(c) To the south, the boundary of the area delineates the extent of "soil types suitable for grape production" (according to Professor Morris). Additionally, Professor Morris stated, "All areas south of the Arkansas Mountain area would be considered in the Pierce's disease region and in these areas, the *Vitis rotundifolia* are best adapted since they are resistant or tolerant to Pierce's disease." Pierce's disease is a vine-destroying disease, associated with warm climates, which attacks vines of the *Vitis vinifera* species (the species from which most of the world's wines are produced), *Vitis vinifera* is grown in the Arkansas Mountain area, but has not been grown successfully in the region to the south of it.

Boundaries of the Area

The boundaries of the new viticultural area are found on two U.S.G.S. maps in the scale of 1:250,000, titled Russellville, Arkansas, and Fort Smith, Arkansas-Oklahoma. The boundaries are as described in new § 9.112, which is added to regulations by this Treasury decision.

The "Arkansas Mountain" boundaries entirely enclose the approved "Altus" viticultural area. Further, the "Arkansas Mountain" area is itself entirely enclosed within the approved "Ozark Mountain" area. In establishing a viticultural area based on geographical features which affect viticultural features, ATF recognizes that the distinctions between a smaller area and its surroundings are more refined than the differences between a larger area and its surroundings. It is possible for a large viticultural area to contain approved viticultural areas, if each area fulfills the requirements for establishment of a viticultural area.

Miscellaneous

ATF does not want to give the impression by approving "Arkansas Mountain" as a viticultural area that it is approving or endorsing the quality of the wine from this area. ATF is approving this area as being distinct but not better than other areas. By approving this area, ATF will allow wine producers to claim a distinction on labels and advertisements as to the origin of the grapes. Any commercial advantage can only come from consumer acceptance of "Arkansas Mountain" wines.

* * * * *

List of Subjects in 27 CFR Part 9

Administrative practice and procedures, Consumer protection, Viticultural areas, Wine.

Drafting Information

The principal author of this document is Steve Simon, FAA, Wine and Beer Branch, Bureau of Alcohol, Tobacco and Firearms.

Issuance

Accordingly, 27 CFR Part 9 is amended as follows:

PART 9—AMERICAN VITICULTURAL AREAS

Paragraph A. The authority citation for Part 9 continues to read as follows:

Authority: 27 U.S.C. 205

Par. B. The table of sections in 27 CFR Part 9, Subpart C, is revised to add the title of § 9.112, to read as follows:

Subpart C—Approved American Viticultural Areas

Sec.

* * * * *

9.112 Arkansas Mountain.

* * * * *

Par. C. Subpart C of 27 CFR Part 9 is amended by adding § 9.112, which reads as follows:

§ 9.112 Arkansas Mountain.

(a) *Name.* The name of the viticultural area described in this section is "Arkansas Mountain."

(b) *Approved maps.* The appropriate maps for determining the boundary of the Arkansas Mountain viticultural area are two U.S.G.S. maps, titled:

(1) Russellville, Arkansas, 1:250,000 series compiled in 1954.

(2) Fort Smith, Arkansas-Oklahoma, 1:250,000 series, 1978.

(c) *Boundary*—(1) *General.* The Arkansas Mountain viticultural area is located in northwestern Arkansas. Starting at the point where Frog Bayou converges with the Arkansas River near Yoestown, Arkansas (or the Fort Smith map), the boundary proceeds:

(2) *Boundary Description.* (i) Southwestward along the Arkansas River to Vache Grasse Creek.

(ii) Then southeastward and southwestward following Vache Grasse Creek to the place where it is crossed by Arkansas Highway 10, near Greenwood, Arkansas.

(iii) From there westward along Highway 10 to U.S. Highway 71. (Note: Highway 10 is the primary highway leading to Greenwood to Hackett, Arkansas.)

(iv) Then southward and eastward along Highway 71 until it crosses Rock Creek.

(v) Then northeastward along Rock Creek to Petit Jean Creek.

(vi) Then generally northeastward and eastward along Petit Jean Creek until it becomes the Petit Jean River (on the Russellville map).

(vii) Then generally eastward along the Petit Jean River, flowing through Blue Mountain Lake, until the Petit Jean River joins the Arkansas River.

(viii) Then generally eastward along the Arkansas River to Cadron Creek.

(ix) Then generally northward and northeastward along Cadron Creek to the place where it is crossed by U.S. Highway 65.

(x) From there northward along Highway 65 to its intersection with Arkansas Highway 16 near Clinton, Arkansas.

(xi) From there following Highway 16 generally westward to its intersection with Arkansas Highway 23 in Brashears, Arkansas.

(xii) From there southward along Highway 23 to the Madison County-Franklin County line.

(xiii) Then westward and southward along that county line to the Madison County-Crawford County line.

(xiv) Then westward along that county line to the Washington County-Crawford County line.

(xv) Then westward along that county line to Jones Fork (on the Fort Smith map).

(xvi) Then southward along Jones Fork until it joins Frog Bayou near Winfrey, Arkansas.

(xvii) Then generally southward along Frog Bayou, flowing through Lake Shepherd Springs and Lake Fort Smith, to the starting point.

Signed: August 15, 1986.
Stephen E. Higgins,
Director.

Approved: September 8, 1986.
Michael H. Lane,
Deputy Assistant Secretary (Regulatory, Trade, and Tariff Enforcement)

(Filed by the Office of the Federal Register on September 25, 1986, 8:45 am and published in the Federal Register for September 26, 1986, 51 F.R. 34204)

TITLE 27—ALCOHOL, TOBACCO PRODUCTS AND FIREARMS—CHAPTER I—BUREAU OF ALCOHOL, TOBACCO AND FIREARMS, DEPARTMENT OF THE TREASURY

Labeling of Sulfites in Alcoholic Beverages

TD ATF-236

27 CFR Parts 4, 5, and 7

AGENCY: Bureau of Alcohol, Tobacco and Firearms, (ATF), Treasury.

ACTION: Final rule, Treasury decision.

SUMMARY: This final rule requires the declaration in labeling of sulfites present in alcoholic beverages at a level of 10 or more parts per million (ppm), measured as total sulfur dioxide, by any method sanctioned by the Association of Official Analytical Chemists (AOAC).

The Commissioner of Food and Drugs has determined that undeclared sulfites pose a risk to public health. In the **Federal Register** of July 9, 1986, the Department of Health and Human Services and the U.S. Food and Drug Administration published a final rule establishing 10 parts per million as the threshold for declaration of sulfites in the labeling of foods, nonalcoholic beverages, and wine products containing less than seven percent of alcohol by volume.

DATES: The effective date of this final rule is January 9, 1987. Transitional rules are provided which will require full compliance by January 9, 1988.

FOR FURTHER INFORMATION CONTACT: Charles N. Bacon, Product Compliance Branch, Bureau of Alcohol, Tobacco and Firearms, Ariel Rios Federal Building, 1200 Pennsylvania Avenue NW., Washington, DC 20226, (202) 566-7595.

SUPPLEMENTARY INFORMATION:

Background

The Federal Alcohol Administration Act, 27 U.S.C. 205(e)(2), vests authority in the Director of the Bureau of Alcohol, Tobacco and Firearms, as the delegate of the Secretary of the Treasury, to prescribe regulations which will provide "adequate information" regarding the identity and quality of alcoholic beverages. Under this authority, labeling requirements are prescribed in Title 27, Code of Federal Regulations, Parts 4, 5, and 7, for wines, distilled spirits, and malt beverages, respectively.

In T.D. ATF-150, published in the **Federal Register** of October 6, 1983 (48 FR 45549), ATF required the declaration in the labeling of alcoholic beverages of the presence of FD&C Yellow No. 5 since it had been established that this colorant posed a recognized health problem. In the preamble of T.D. ATF-150, ATF stated that there was no clear evidence in the public record that any other ingredient being used in the production of alcoholic beverages posed a recognized health problem. ATF stated that it would "look at the necessity of mandatory labeling of other ingredients on a case-by-case basis" through a rulemaking initiative or by a petition for rulemaking.

Subsequent to the issuance of this regulation, ATF issued T.D. ATF-220, dated December 20, 1985 (50 FR 51851), which required the declaration of saccharin in the labeling of alcoholic beverages containing this sweetener.

Chronology of Sulfite Rulemaking Activities

Following FDA's publication in the **Federal Register** of July 9, 1982 (47 FR 29956) of a proposal to affirm the "generally recognized as safe" (GRAS) status of sulfur dioxide, sodium metabisulfite, sodium bisulfite and potassium metabisulfite, FDA initiated a comprehensive search and reexamination of all literature pertaining to the use of sulfiting agents in foods and drugs and contracted with the Federation of American Societies for Experimental Biology (FASEB) to review this data.

During the time period in which FDA was reviewing and reconsidering its proposal to affirm the GRAS listings for sulfites, ATF proposed in Notice No. 543, published in the Federal Register of September 24, 1984 [49 FR 37527], reductions of the 350 parts per million limitation prescribed for total sulfur dioxide in wine. These and other proposals in Notice No. 543, relating to revisions of the lists of materials and processes authorized for the treatment of juice and wine, are still under review and consideration by ATF. In the preamble of T.D. ATF-182 [49 FR 37510] which prescribed revised lists of authorized treating materials and processes, ATF stated, in part, that:

> At the present time, there is insufficient scientific data to justify ATF's delisting of the use of sulfiting agents in the treatment of wine. Accordingly, ATF is retaining sulfur dioxide as an authorized preservative agent in the treatment of wine. However, if at some future date the U.S. Food and Drug Administration were to determine that the sulfiting of foods and beverages presents a risk to public health and requires labeling disclosure, ATF would promptly propose the disclosure in labeling of sulfur dioxide and sulfiting agents.

On April 3, 1985, the Secretary of Health and Human Services and the Commissioner of Food and Drugs proposed an amendment to the food labeling regulations prescribed in Title 21, Code of Federal Regulations, Part 101, to establish 10 parts per million as the level of significance for residues of sulfiting agents added to foods and beverages [50 FR 13306]. In the preamble of this proposal, FDA stated that "sulfiting agents have been shown to produce allergic-type responses in humans and the presence of these ingredients in food may have serious health implications for those persons who are intolerant of sulfites." FDA stated further that "a label declaration of sulfites in food will enable persons intolerant to sulfites to minimize their exposure to these ingredients."

In Notice No. 566, published in the Federal Register of June 24, 1985 [50 FR 26001], ATF proposed the declaration in the labeling of alcoholic beverages of the presence of sulfites, whether added or produced naturally during fermentation, where the residual level of sulfite(s), measured as total sulfur dioxide by the AOAC sanctioned Monier-Williams method of analysis, equals or exceeds the level of measurable detection established by FDA for sulfiting agents added to foods and beverages.

Summary of Comments to Notice No. 566

ATF received a total of 516 comments of which 316 favored the proposals, 166 opposed the proposal, 14 requested extension of the comment period, and 20 offered "other" comment.

Wine Institute

Wine Institute, representing a membership of 500 commercial winemakers, stated its position which is summarized as follows:

(1) The causative agent in sulfite sensitivity is the "free" (molecular) sulfite;

(2) Wine is unique because the sulfites in wine are actually harmless sulfonates which are "irreversibly bound";

(3) There has never been a health problem with the sulfiting of wine; and,

(4) The only health problem, the indiscriminate use of "free" sulfites in raw fruits and vegetables, the so-called "salad bar syndrome," has been effectively resolved by industry and regulatory actions.

Wine Institute forwarded with its comment the preliminary results of medical testing which it had funded to support this position. Following a review of the summary data by FDA, representatives of Wine Institute met on March 27, 1986, with FDA and ATF officials and reported some indications of reactions to bound sulfites. In a June 27, 1986, letter endorsing the labeling of sulfites in wines, Wine Institute acknowledged that "part of the population of hyperallergenic asthmatics may be sulfite sensitive to wine . . . (and) while warning labels are certainly not warranted, informational labeling could assist some hyperallergenic asthmatics."

Ad Hoc Advisory Committee on Hypersensitivity to Food Constituents

This committee, established and funded by FDA, evaluated the literature pertaining to sulfites in two public meetings held in September and December of 1985. The committee voted unanimously to support ATF's labeling proposal.

FDA

The comment of Sanford A. Miller, Ph.D., Director, Center for Food Safety and Applied Nutrition, included the following statement:

FDA is in agreement with Notice No. 566 and supports the proposed rulemaking. As we have stated on previous occasions, FDA believes that individuals who are hypersensitive or simply wish to avoid or favor certain food ingredients should receive adequate notice of the presence of these ingredients in food. We believe that your Notice No. 566 accomplishes that for sulfiting agents.

CSPI

While generally supportive of ATF's proposal, the Center for Science in the Public Interest (CSPI) expressed its concern that the proposal "falls far short of adequately protecting the public from allergic reactions to alcoholic beverage ingredients other than sulfites." CSPI recommends that labels state "Contains (name of specific sulfting agent), a sulfiting agent, used as a preservative" and that ATF specify that the sulfite declaration appear on the front brand label pursuant to the print size specifications for wine labeling.

Generic Labeling

The Grocery Manufacturers of America (GMA) submitted to ATF a comment favoring the use of a generic statement in lieu of a declaration specifying the name and technical effect of the sulfiting agent added to an alcoholic beverage. GMA had submitted this same comment in response to FDA's labeling proposal of April 3, 1985. GMA advocates the use of a generic labeling statement since various forms of sulfites may be used depending upon availability and cost to the processor or manufacturer.

General Comments Opposed to Proposal

Included in the various comments presented in opposition to the proposal were the following statements challenging the necessity for the declaration of sulfites on the grounds of economic impact, history of use, and practicality:

(1) The claim that for centuries wines have been sulfited without adverse effects;

(2) The need to add sulfites to wine compared to the lack of such need and outright abuse of sulfites in salad bars;

(3) Wine cannot withstand the handling and shipping vital to its dis-

tribution and export without the help of preservatives;

(4) Use of sulfur dioxide allows long storage in wood, bottle aging, and the maintaining of fruity flavors and freshness;

(5) The presence in wines and beers of "bound" sulfites produced naturally during fermentation;

(6) The AOAC method of analysis does not differentiate molecular bisulfite and the chemically "bound" forms which comprise most of the total sulfur dioxide measured in wine;

(7) The premise that only the free sulfite which constitutes an extremely small fraction of the materials measured as total sulfur dioxide in wine is the cause of reported sulfite sensitivities;

(8) The number of sulfite-sensitive individuals is estimated to constitute a very small segment (less 0.2 percent) of the U.S. population; and,

(9) To require all wines to be labeled with the phrase "contains sufiting agents" would not be giving sulfite-sensitive consumers any distinguishing information regarding various producers and products.

Additional Comments

An importer of wines requested that ATF require a sulfite declaration only on the labels of wines to which sulfites have been added. This would exempt wines containing nonadditive sulfites, i.e., the sulfites produced during fermentation by action of yeast on sulfates naturally present in juice. The commenter maintains that naturally produced sulfites are "irreversibly bound" and only the added "free sulfites cause the reactions experienced by sulfite-sensitive individuals.

A domestic winemaker expressed concern about implementation of an effective date for a sulfite labeling requirement. The commenter also expressed the concern that a final rule requiring a labeling declaration of sulfites should apply equally to foreign and domestic products. The commenter stated that an implementation date based on the time of bottling would be unenforceable in foreign countries since ATF has no authority to inspect records in order to verify bottling dates.

A medical researcher pointed out that the proposal does not expressly distinguish between naturally-occurring and additive sulfites. This commenter states that "the sensitive asthmatic cannot distinguish between the natural and additive forms either" and that "there is scant opportunity to eliminate naturally-occurring sulfites from fermented beverages."

A major importer of wines states that "when a product contains a substance that may cause an adverse physical reaction among a specific class of consumers, that fact should be declared on the label, along with the identify of the category of consumers at risk. The commenter cites as an example FDA's handling of the labeling of products containing the sweetener "aspartame" by requiring the labeling statement "Phenylketonurics: Contains "Phenylalanine", a precedent upon which the commenter believes ATF should base its labeling of sulfites.

"Free" Versus "Bond" Sulfites

Many of the commenters who had expressed opposition to the labeling proposal theorized (1) that the "free" form of sulfite was the cause for reactions experienced by sulfite-sensitive individuals and (2) that most sulfites in wine are "irreversibly bound" sulfonates. FASEB's review as well as studies by leading researchers indicate a connection between the free form of sulfites and the reactions experienced by sulfite-sensitive individuals. However, the medical testing funded by the Wine Institute shows that sulfite-sensitive individuals can react to the purportedly "bound sulfites."

FDA's Final Rule

In the Federal Register of July 9, 1986, the Secretary of Health and Human Services and the Commissioner of Food and Drugs published a final rule implementing regulations as proposed in FDA's notice of April 3, 1985, and requiring the declaration of sulfiting agents present at a minimum level of 10 parts per million measured as total sulfur dioxide. The effective date is January 9, 1987.

ATF's Final Rule

In view of ATF's knowledge of alcoholic beverage production, the data amassed by FDA in its second review of the GRAS status of sulfites, the recommendations of FASEB, and the public comments addressing ATF's proposal, ATF is issuing this final rule which requires the declaration on the label of alcoholic beverages of the presence of sulfites when present at 10 or more parts per million, measured as total sulfur dioxide.

Since FDA has determined that the presence of undeclared sulfites in foods and beverages poses a recognized health problem to a certain class of individuals, ATF believes that the declaration of sulfites in the labeling of alcoholic beverages is necessary in order to inform sulfite-sensitive individuals of the presence of sulfites in alcoholic beverages. A label declaration of sulfites in foods and beverages will enable persons who are aware of an intolerance to sulfites to minimize their exposure to these ingredients.

This final rule requires the labeling of sulfites *present* in alcoholic beverages at a level of 10 or more parts per million (ppm), measured as total sulfur dioxide, by *any* method sanctioned by the Association of Official Analytical Chemists (AOAC). The mandatory sulfite declaration applies to alcoholic beverages which, at the time of bottling, contain 10 or more parts per million of sulfites measured as total sulfur dioxide. This final rules does not distinguish between the "free" and "bound" forms of sulfites.

ATF, in consideration of the deficiencies of the Monier-Williams test, will recognize any method which is sanctioned by the Association of Official Analytical Chemists for use in the determination of sulfites in alcoholic beverages. To date, only the Monier-Williams test has AOAC sanction; however, several methods, e.g., flow injection analysis and a combination Ripper/aeration-Oxidation method, show promise and are to be collaboratively studied by AOAC in the coming months.

Form of Declaration

In consideration of FDA's determination that sulfites pose a health risk to certain individuals versus the economic impact of mandating new labeling information for producers, bottlers and importers of alcoholic beverages, ATF believes that the generic statements "Contains sulfites," "Contains a sulfiting agent," or "Contains sulfiting agents" provide adequate and effective notice to consumers of alcoholic beverages and have a minimal impact on producers, bottlers and importers responsible for the labeling of products affected by this final rule. ATF believes that a simple generic statement best serves the purpose of allerting an individual who is aware of a sensitivity to sulfites.

Producers, bottlers and importers have the option of identifying the specific sulfiting agent by its common or usual name. The common or usual names for the six sulfiting agents are "sulfur dioxide", "sodium sulfite", "sodium bisulfite", "potassium bisulfite", "sodium metabisulfite", and "potassium metabisulfite." ATF does not recognize the use of other terms, e.g., "sulfurous (acid) anhydride", "pyrosulfite", or similar wording, as acceptable labeling for the declaration of sulfites because the vagueness of such terminology has the potential to mislead consumers.

A producer, bottler or importer may, *in addition to* the mandatory statement, state the parts per million of total sulfur dioxide determined to be present in the finished product immediately prior to bottling. The producer, bottler or importer may, *in addition to* the mandatory sulfite declaration, state the parts per million of free sulfite present at bottling provided this information is preceded by a statement of the parts per million of sulfite(s) measured as total sulfur dioxide immediately prior to bottling. For example, the label of a bottle of wine containing sulfites could declare the sulfite content as follows:

"CONTAINS SULFITES. At the time of bottling this product contained 100 parts per million total sulfur dioxide and 25 parts per million free sulfite."

ATF considers statements disclosing *only* the level of free sulfite or the level of free sulfite *not preceded immediately* by the total sulfur dioxide content as likely to mislead the consumer of the alcoholic beverage.

The mandatory declaration of the presence of sulfites shall conform to the size of type requirements for mandatory labeling information as prescribed in Title 27, Code of Federal Regulations Parts 4, 5 and 7. If the mandatory declaration is contained among other descriptive or explanatory information, e.g., levels of total and free sulfites, the script, type, or printing of the mandatory declaration shall be of a size substantially more conspicuous than that of the descriptive or explanatory information. The declaration of sulfites shall appear on a contrasting background.

In order to allow producers, bottlers and importers flexibility in implementing the provisions of this final rule, the declaration of sulfites may appear on a neck or strip label in lieu of the brand (front) label or back label.

Method of Analysis

Under ATF's Notice No. 566, the detectable amount of a sulfiting agent is 10 or more parts per million, expressed as total sulfur dioxide, in the finished alcoholic beverage when a sample of the product is analyzed using the Monier-Williams method prescribed in section 20.123-20.125, "Total Sulfurous Acid," in "Official Methods of Analysis of the Association of Official Analytical Chemists (AOAC)," 14th Ed. (1984). A copy of this method is available from the Association of Official Analytical Chemists, P.O. Box 540, Benjamin Franklin Station, Washington, DC 20044.

Since publication of the proposal, however, ATF has found that FDA's laboratories and ATF's laboratories actually use modifications of the published method, not expressly sanctioned by AOAC, e.g., a combination of the Ripper method and the aeration-oxidation method, to obtain more quantitative results of analysis. In addition, ATF is aware of ongoing efforts under the auspices of AOAC to conduct collaborative studies of at least a dozen newly-developed methods for quantitative analysis of sulfites in the various food matrices. In light of these developments, ATF will not specify use of the Monier-Williams test. Any method evaluated by collaborative study under AOAC auspices and published by AOAC for use in the determination of total sulfur dioxide in alcoholic beverages may be used.

Effective Date, Transition Period, Mandatory Dates

Implementation of a final rule requiring the declaration of sulfites in the labeling of alcoholic beverages which contain 10 or more parts per million of sulfites requires a reasonable period of time for industry members to bring labels of products affected by this final rule into compliance.

FDA has established a transition period of 180 days because information about the presence of sulfiting agents is not merely informative but is necessary to protect the health of sulfite-sensitive individuals. However, FDA's final rule constitutes a clarification of existing statutory and regulatory requirements applicable to the labeling of food and nonalcoholic beverages. Only a small percentage of the food and beverage industries within FDA's jurisdiction had not labeled products for sulfites because of a misunderstanding about what constituted a significant level of residual sulfites requiring a labeling declaration.

The mandatory declaration of sulfites in the labeling of alcoholic beverages is entirely new to the alcoholic beverage industry. It will require revision of the labels of all but a very few wines offered for sale in the United States and to a lesser extent will require revision to the labels of some malt beverages, and few, if any, distilled spirits products, offered for sale in the United States. In view of this new requirement placed upon the industry, ATF has established an effective date of January 9, 1987, for the final rule, followed by a one-year transition period for the full implementation of the rule.

As of the effective date of January 9, 1987, all labels submitted for approval for alcoholic beverages affected by this final rule shall bear the mandatory sulfite declaration. As of July 9, 1987, all alcoholic beverages affected by this final rule, shall, at the time of bottling, be labeled with the mandatory sulfite declaration. As of January 9, 1988, the labels of all alcoholic beverages affected by this final rule shall include the mandatory sulfite declaration upon removal from domestic bottling premises or from customs custody. During the 180-day period beginning on July 9, 1987, producers, bottlers and importers may remove alcoholic beverages affected by this final rule from bottling premises or from customs custody without a sulfite declaration provided such products are bottled prior to July 9, 1987. On and after January 9, 1988, the labels of all alcoholic beverages affected by this requirement shall bear a sulfite declaration upon the removal of such products from bottling premises in the case of domestically-bottled products or withdrawal from customs custody in the case of foreign-bottled products. As of this date, alcoholic beverages affected by this final rule may no longer be removed from bottling premises or from customs custody without the mandatory sulfite declaration, regardless of the dates of bottling.

Certificates of Label Approval

Labels for alcoholic beverages affected by this final rule will require revision to include the mandatory sulfite declaration. The volume of applications for certificates of label approval for revised labels, especially for wines, however, would impose a large burden on industry and on ATF. Accordingly, ATF deems product labeling covered by existing certificates of label approval and which is revised solely to include the mandatory sulfite declaration, approved without the necessity for submission of a new certificate of label approval.

With the exception of the labeling statements specifically listed on the reverse of ATF Form 5100.31, for which the submission of a new application is not required, e.g., net contents and vintage year, any change in graphics, design, style, or in the wording or placement of mandatory and nonmandatory information printed on the original label(s) will necessitate the filing of a new application for a certificate of label approval.

ATF is permitting the addition of a separate strip or neck label which shows the mandatory sulfite declaration. The use with a previously approved label of a strip or neck label which bears *only* the sulfite declaration will not require the submission of a new certificate of label approval. If the sulfite declaration is added with no other changes to a previously approved strip or neck label bearing other information, the revision of the strip or neck label will not require the submission of a new application for certificate of label approval.

As of January 9, 1987, the effective date of this final rule, all sets of labels submitted on applications for certificates of label approval for alcoholic beverages containing 10 or more parts per million of total sulfur dioxide shall include the mandatory sulfite declaration. This statement may appear on a front or back label or on a strip or neck label. Any producer, bottler or importer who, as of this date, files an application for a certificate of label approval for a wine which is believed to contain less than 10 parts per million of sulfites, measured as total sulfur dioxide, shall also forward a sampling representative of the finished wine and consisting of 10 bottles having minimal net contents of 100 milliliters. ATF will analyze the wine for sulfur dioxide content prior to the issuance of a certificate of label approval for wine which does not bear the mandatory sulfite declaration.

Beginning on September 30, 1986, the date of publication of this final rule in the **Federal Register,** and until the effective date of January 9, 1987, ATF's Product Compliance Branch will qualify all newly issued certificates of label approval for wines not bearing the mandatory sulfite declaration with the statement:

"In order for this product to be bottled on and after July 9, 1987, this label must be revised to include the mandatory sulfite declaration prescribed in 27 CFR 4.32(e)."

ATF encourages the filing of applications for new labels as far in advance as possible of the July 9, 1987, mandatory date for bottling and labeling compliance.

Although the submission of new certificates of label approval is not necessary, producers, bottlers and importers who choose to submit applications for labels revised to include the mandatory sulfite declaration, are encouraged to include a photocopy of the previously issued certificate of label approval with each new application. This will facilitate approval by allowing a comparison of the previously approved label with the revised label.

* * * * *

Drafting Information

The principal author of this document is Coordinator Michael J. Breen of the FAA, Wine and Beer Branch, Bureau of Alcohol, Tobacco and Firearms. Coordinator Charles N. Bacon of the Product Compliance Branch assisted in the drafting of this document.

List of Subjects

27 CFR Part 4

Advertising, Consumer protection, Customs duties and inspection, Imports, Labeling, Packing and containers, Wine.

27 CFR Part 5

Advertising, Consumer protection, Customs duties and inspection, Imports, Labeling, Liquors, Packaging and containers.

27 CFR Part 7

Advertising, Beer, Consumer protection, Customs duties and inspection, Imports, Labeling.

Authority and Issuance

PART 4—LABELING AND ADVERTISING OF WINE

Paragraph 1. The authority citation for 27 CFR Part 4 continues to read as follows:

Authority: 27 U.S.C. 205.

Par 2. Section 4.32 is amended by adding a new paragraph (e) and OMB control number to the end of this section as follows:

§ 4.32 Mandatory label information.

* * * * *

(e) *Declaration of sulfites.* There shall be stated on a front label, back label, strip label or neck label, the statement "Contains sulfites" or "Contains (a) sulfiting agent(s)" or a statement identifying the specific sulfiting agent where sulfur dioxide or a sulfiting agent is detected at a level of 10 or more parts per million, measured as total sulfur dioxide. The provisions of this paragraph shall apply to (1) Any certificate of label approval issued on or after January 9, 1987; (2) any wine bottled on or after July 9, 1987, regardless of the date of issuance of the certificate of label approval; and (3) any wine removed on or after January 9, 1988.

* * * * *

(Paragraph (e) approved by the Office of Management and Budget under Control No. 1512-0469)

PART 5—LABELING AND ADVERTISING OF DISTILLED SPIRITS

Par. 3. The authority citation for 27 CFR Part 5 continues to read as follows:

Authority: 27 U.S.C. 205.

Par. 4. Section 5.32 is amended to redesignate paragraphs (b) (7), (8), and (9) as paragraphs (b) (8), (9), and (10), respectively, to add a new paragraph (b)(7) and to add the OMB control number to the end of the section as follows:

§ 5.32 Mandatory label information.

* * * * *

(b) * * *

(7) *Declaration of sulfites.* There shall be stated, the statement "Contains sulfites" or "Contains (a) sulfiting agent(s)" or a statement identifying the specific sulfiting agent where sulfur dioxide or a sulfiting agent is detected at a level of 10 or more parts per million, measured as total sulfur dioxide. The sulfite declaration may appear on a strip label or neck label in lieu of appearing on the front or back label. The provisions of this paragraph shall apply to: (i) Any certificate of label approval issued on or after January 9, 1987; (ii) any distilled spirits bottled on or after July 9, 1987, regardless of the date of issuance of the certificate of label approval; and, (iii) any distilled spirits removed on or after January 9, 1988.

* * * * *

(Paragraph (b)(7) approved by the Office of Management and Budget under Control No. 1512-0469)

Par. 5. Section 5.33 is amended by revising paragraph (b)(2), by redesignating paragraphs (b)(3), (4), and (5) as paragraphs (b)(4), (5) and (6), respectively, and by adding a new paragraph (b)(3) as follows:

§ 5.33 Additional requirements.

* * * * *

(2) (2) Statements required by this subpart, except brand names and the declaration of sulfites in § 5.32(b)(7), shall be separate and apart from any other descriptive or explanatory matters.

(3) If not separate and apart from other descriptive or explanatory matter

printed on the label, the statement declaring the presence of sulfites shall be of a size substantially more conspicuous than surrounding nonmandatory labeling information.

* * * * *

PART 7—LABELING AND ADVERTISING OF MALT BEVERAGES

Par. 6. The authority citation for 27 CFR Part 7 continues to read as follows:

Authority: 27 U.S.C. 205.

Par. 7. Section 7.22 is amended by adding a new paragraph (b)(6) and OMB control number to the end of the section as follows:

§ 7.22 Mandatory label information.

* * * * *

(b) * * *

(6) *Declaration of sulfites.* The statement "Contains sulfites" or "Contains (a) sulfiting agent(s)" or a statement identifying the specific sulfiting agent where sulfur dioxide or a sulfiting agent is detected at a level of 10 or more parts per million, measured as total sulfur dioxide. The sulfite declaration may appear on a strip label or neck label in lieu of appearing on the front or back label. The provisions of this paragraph shall apply to: (i) Any certificate of label approval issued on or after January 9, 1987; (ii) any malt beverage bottled on or after July 9, 1987, regardless of the date of issuance of the certificate of label approval; and, (iii) any malt beverage removed on or after January 9, 1988.

* * * * *

(Paragraph (b)(6) approved by the Office of Management and Budget under Control No. 1512-0469).

Signed: August 11, 1986.

Stephen E. Higgins,
Director.

Approved: September 8, 1986.

Francis A. Keating, II,
Assistant Secretary (Enforcement).

Filed by the Office of the Federal Register on September 29, 1986 8:45 am and published in the Federal Register for September 30, 1986, 51 F.R. 34706)

TITLE 27—ALCOHOL, TOBACCO PRODUCTS AND FIREARMS—CHAPTER 1—BUREAU OF ALCOHOL, TOBACCO AND FIREARMS, DEPARTMENT OF THE TREASURY

Labeling of Distilled Spirits in Percent-Alcohol-by-Volume

TD ATF-237

27 CFR Parts 5 and 19

AGENCY: Bureau of Alcohol, Tobacco and Firearms, Treasury.

ACTION: Final rule, Treasury decision.

SUMMARY: On January 24, 1986, the Bureau of Alcohol, Tobacco and Firearms (ATF) proposed (at 51 FR 3208) to amend regulations in 27 CFR Parts 5 and 19 to provide for labeling and advertising the alcohol content of distilled spirits products in percent-alcohol-by-volume rather than in proof. The notice of proposed rulemaking, Notice No. 580, was based on a petition submitted by Joseph E. Seagram and Sons, Inc. This final rule adopts the proposed rule with minor modifications and with a transition period of two years.

EFFECTIVE DATE: Amendatory paragraphs 2A, 3A, 7A and 8A are effective November 10, 1986. Amendatory paragraphs 2B, 3B, 4, 6, 7B, 8B and 9 are effective October 10, 1988.

FOR FURTHER INFORMATION CONTACT: John A. Linthicum, FAA, Wine and Beer Branch (202-566-7626).

SUPPLEMENTARY INFORMATION:

Background

The alcohol content is specifically required to be shown on labels and in advertisements of distilled spirits products under 27 U.S.C 205 (e) and (f). The purpose of this requirement, stated in this section, is to "... provide the consumer with adequate information as to the identity and quality of the products, [including] the alcoholic content thereof...". The alcohol content is also required to be shown on labels of distilled spirits products under the authority conferred by 26 U.S.C 5301(a). This section reads, in part, "Whenever in his judgment such action is necessary to protect the revenue, the Secretary is authorized, by the regulations prescribed by him... to regulate the kind, size, branding, marking,... of containers (of a capacity of not more than 5 wine gallons) designed or intended for use for the sale of distilled spirits...".

Since the repeal of Prohibition, ATF and its predecessor agencies have regulated the labeling and advertising of the alcohol content of distilled spirits products by requiring a statement expressed in degrees of proof. (Degrees of proof are equal to the percent-alcohol-by-volume multiplied by two). This requirement, unchanged for 50 years, was also the conventional method of labeling and advertising the alcohol content of distilled spirits products before Prohibition. Branding and marking requirements are expressed in proof on labels of distilled spirits because the tax is imposed on the basis of proof.

The previous regulations, 27 CFR 5.37, 5.63, and 19.643, required proof statements on labels and in advertisements of distilled spirits, except that the alcohol content could be stated in percent-alcohol-by-volume on labels for liqueurs, cordials, bitters, cocktails, highballs, or other such specialties.

Petition

Joseph E. Seagram & Son, Inc. petitioned ATF to amend 27 CFR 5.37, relating to the alcohol content statement on labels of distilled spirits. Seagram petitioned for a statement of percent-alcohol-by-volume to replace the use of proof statements on labels of distilled spirits. ATF proposed this change in Notice No. 580, published in the Federal Register of January 24, 1986, at 51 FR 3208, ATF also proposed to amend the similar labeling requirement in 27 CFR 19.643, and the mandatory advertising statement of alcohol content in 27 CFR 5.63.

Discussion

In the November 1980 Report to the President and the Congress on *Health Hazards Associated with Alcohol and Methods to Inform the General Public of these Hazards*, submitted by the Treasury Department and the Department of Health and Human Services, the Treasury Department was in favor of labeling distilled spirits in percent-alcohol-by-volume.

In the ATF Quarterly Bulletin, A.T.F.Q.B. 1985—2, Page 71, ATF announced that statements of percent alcohol-by-volume may now appear on labels of all distilled spirits products, as *additional*, truthful information. This announcement reversed a long-standing label approval policy, and partially implemented the Seagram's petition and the November 1980 Report to the President and the Congress, mentioned above.

Other Requirements to Label Proof. In Notice No. 580, ATF specifically did not consider the amendment of regulations on marking requirements for cases, bulk containers (including barrels used for aging spirits), or bottles of industrial alcohol used by hospitals, universities, or manufacturers of food products or medicinal preparations. These regulations require that some containers of distilled spirits be marked to show the proof of the product. In general, these are the containers on which taxes are determined. Since taxes are imposed on the basis of proof, as previously discussed, these requirements are oriented toward protection of the revenue.

Moreover, these marking requirements have little or no impact on consumers. Although whole cases of distilled spirits are sometimes purchased by consumers, ATF does not generally consider a case to be a consumer container. Therefore, ATF did not propose to amend the marking requirements for these containers.

Public Comments

In response to Notice No. 580, ATF received 23 comments, as follows: 17 in favor, 5 opposed, 1 no preference. Demographically, the commenters were: 8 bottlers of distilled spirits products, 6 consumers, 5 trade associations, 3 government agencies, and 1 importer of distilled spirits products. Based on this response, and based on the Treasury Department's previous report to the President and the Congress in favor of making this change, ATF is adopting the proposed rule, modified as discussed below.

Four commenters, R.E. Welch State of Idaho Liquor Dispensary, Washington State Liquor Control Board, and Scotch Whisky Association, suggested that there should be a transition period during which the alcohol content is expressed in both forms, to educate consumers. In drafting Notice No. 580, ATF considered but rejected this idea, since it would require two label changes. Also, as previously discussed, importers and bottlers are already allowed to show the alcohol content in both forms, if desired. At a later date, importers and bottlers may choose to drop the proof statement which is being made optional in this final rule.

In Notice No. 580, ATF requested comments on the following question: If percentage statements replace proof statements, how long should the transition period be? Seven commenters addressed this question, including four bottlers of distilled spirits who are directly affected by this aspect of the proposed change. Their comments are as follows: R.E. Welch and Consolidated Distilled Products, Inc. were in favor of a five-year transition. Consolidated stated that some small bottlers frequently purchase label stocks of up to a five to ten year supply. The Washington State Liquor Control Board was in favor of a two-year transition period during which the alcohol content is expressed in both forms, to help educate the consumer. Brown-Forman Corp. was in favor of an 18-month transition period, if an open-ended transition period could not be allowed. Scotch Whisky Association was in favor of a 12- to 18-month transition period. Ed Phillips & Sons was in favor of a transition period of one year. ISC Wines of California was in favor of a transition period which is "long enough that suppliers are able to use up existing labels."

Implementation

Transition period. ATF has decided to implement the new requirement in two years. ATF believes that this period is long enough for industry members to make the conversion with little or no waste of obsolete labels. A two-year period will also minimize the confusion caused by having two styles of labels on retail shelves.

Use of Both Forms in Direct Conjunction. The proposed rule allowed the alcohol content to be expressed in both forms. The final rule adopts this proposal with the additional requirement that both forms, if shown, must be in direct conjunction with each other. Without this requirement, a consumer could be confused if he/she found "80° proof" on one part of the label and "40 percent-alcohol-by-volume" elsewhere on the same label. The requirement for direct conjunction dispels possible consumer confusion, and shows the consumer that the two expressions of alcohol content mean the same thing. To emphasize the fact that both expressions of alcohol content mean the same thing, the optional statement in degrees of proof must be placed in parentheses, in brackets, or otherwise distinguished from the mandatory percent-alcohol-by-volume statement.

Revision of 27 CFR 19.643. Notice No. 580 proposed to amend 27 CFR 19.643 by replacing the first sentence with two sentences. Based on the modifications of the proposed rule discussed above, ATF is completely revising this section for clarity by adding designated paragraphs to separate the several label statements required by the section.

Amendment of §§ 19.386, 19.395, and 19.750. Notice No. 580 did not propose to amend §§ 19.386, 19.395, or 19.750. These sections relate to labels for spirits bottled for export and bottling line tests of alcohol content. ATF believes that these sections should also be amended to remove references to measurement of alcohol content in proof.

Incorporation of Revenue Ruling 55-494. Amendment of all regulations on labeling alcohol content enables ATF to incorporate Revenue Ruling 55-494, which requires a special label statement of alcohol content for "Rock and Rye" and similar products. These products contain a significant amount of fruit or other solid material in the bottle. As a result, the alcohol content of the liquid portion reduces over time. Therefore, this ruling was issued to require that the label show the alcohol content at the time the product is bottled, as follows: "Bottled at ____ proof." The substance of this ruling is incorporated in each section which requires the labeling alcohol content. Revenue Ruling 55-494, I.R.C.B. 1955-2, 736, is hereby declared obsolete on the effective date of this final rule.

New Label Approval Not Required. Labels may be changed to implement this final rule without submission of the revised labels for approval by ATF. The same mandatory requirements of 27 CFR 5.33 (size, color contrast, etc.) shall apply to labels revised with the new alcohol content statement expressed in percent-alcohol-by-volume.

* * * * *

List of Subjects

27 CFR Part 5

Advertising, Consumer protection, Customs duties and inspection, Imports, Labeling, Liquors, Packaging and containers.

27 CFR Part 19

Administrative practice and procedure, Alcohol and alcoholic beverages, Authority delegations, Claims, Chemicals, Customs duties and inspection, Electronic funds transfers, Excise taxes, Exports, Gasohol, Imports, Labeling, Liquors, Packaging and containers, Puerto Rico, Reporting and recordkeeping requirements, Research, Security measures, Spices and flavorings, Surety bonds, Transportation, Virgin Islands, Warehouses, Wine.

Drafting Information

The principal author of this document is John A. Linthicum, FAA, Wine, and Beer Branch, Bureau of Alcohol, Tobacco and Firearms.

Authority and Issuance

PART 5—[AMENDED]

27 CFR Part 5—Labeling and Advertising of Distilled Spirits is amended as follows:

1. The authority citation for Part 5 continues to read as follows:

Authority: 27 U.S.C. 205.

2A. Section 5.37 is amended by revising paragraph (a) to read as follows:

§ 5.37 Alcoholic content.

(a) *Statement.* The alcohol content for distilled spirits shall be stated in proof or in percent-alcohol-by-volume. Products such as "Rock and Rye" or similar products containing a significant amount of solid material shall state the alcohol content at the time of bottling as follows: "Bottled at ____ percent-alcohol-by-volume" or "Bottled at ____ proof."

* * * * *

2B. Effective on October 10, 1988, § 5.37 is revised to read as follows:

§ 5.37 Alcohol content.

(a) *Statements.* (1) *Mandatory statement.* The alcohol content for distilled spirits shall be stated in percent-alcohol-by-volume. Products such as "Rock and Rye" or similar products containing a significant amount of solid material shall state the alcohol content at the time of bottling as follows: "Bottled at ____ percent-alcohol-by-volume."

(2) *Optional statement.* In addition, the label may also state the alcohol content in degrees of proof if this information appears in direct conjunction (i.e. with no intervening material) with the statement expressed in percent-alcohol-by-volume. If both forms of alcohol content are shown, the optional statement in degrees of proof shall be placed in parentheses, in brackets, or otherwise distinguished from the mandatory statement in percent-alcohol-by-volume to emphasize the fact that both expressions of alcohol content mean the same thing.

(b) *Tolerances.* The following tolerances shall be allowed (without affecting the labeled statement of alcohol content) for losses of alcohol content occurring during bottling:

(1) Not to exceed 0.25 percent-alcohol-by-volume for spirits containing solids in excess of 600 mg per 100 ml; or

(2) Not to exceed 0.15 percent-alcohol-by-volume for all other spirits.

(Approved by the Office of Management and Budget under Control Number 1512-0482)

Authority: Sec. 201, Pub. L. 85—859, 72 Stat. 1394, as amended (26 U.S.C. 5301(a)); 49 Stat. 917, as amended (27 U.S.C. 205(e)).

3A. Paragraph (c) of § 5.63 is revised to read as follows:

§ 5.63 Mandatory statements.

* * * * *

(c) *Alcoholic content.* The alcohol content for distilled spirits shall be stated in proof or in percent-alcohol-by-volume. Products such as "Rock and Rye" or similar products containing a significant amount of solid material shall state the alcohol content at the time of bottling as follows: "Bottled at ____ percent-alcohol-by-volume" or "Bottled at ____ proof".

* * * * *

3B. Effective on October 10, 1988, paragraph (c) of § 5.63 is revised to read as follows:

§ 5.63 Mandatory statements.

* * * * *

(c) *Alcohol content.* (1) *Mandatory statement.* The alcohol content for distilled spirits shall be stated in percent-alcohol-by-volume. Products such as "Rock and Rye" or similar products containing a significant amount of solid material shall state the alcohol content at the time of bottling as follows: "Bottled at ____ percent-alcohol-by-volume."

(2) *Optional statement.* In addition, the advertisement may also state the

alcohol content in degrees of proof if this information appears in direct conjunction (i.e. with no intervening material) with the statement expressed in percent-alcohol-by-volume. If both forms of alcohol content are shown, the optional statement in degrees of proof shall be placed in parentheses, in brackets, or otherwise distinguished from the mandatory statement in percent-alcohol-by-volume to emphasize the fact that both expressions of alcohol content mean the same thing.

* * * * *

PART 19—[AMENDED]

27 CFR Part 19—Distilled Spirits Plants is amended as follows:

4. Effective on October 10, 1988, the table of sections for Part 19 is amended by revising the headings of §§ 19.386 and 19.750 to read as follows:

Sec.

* * * * *

19.386 Alcohol content and fill.

* * * * *

19.750 Records of alcohol content and fill tests.

* * * * *

5. The authority citation for Part 19 continues to read as follows:

Authority: 26 U.S.C. 5001, 5002, 5004-5006, 5008, 5041, 5061, 5062, 5066, 5101, 5111-5113, 5171-5173, 5175, 5176, 5178-5181, 5201-5207, 5211-5215, 5221-5223, 5231, 5232, 5235, 5236, 5241-5243, 5271, 5273, 5301, 5311-5313, 5362, 5370, 5373, 5501-5505, 5551-5555, 5559, 5561, 5562, 5601, 5612, 5682, 6001, 6065, 6109, 6302, 6311, 6676, 7510; 7805; 31 U.S.C. 9301, 9303, 9304, 9306.

6. Effective on October 10, 1988, § 19.386 is revised to read as follows:

§ 19.386 Alcohol content and fill.

(a) *General.* (1) Proprietors shall test and examine at representative intervals spirits bottled during bottling operations to determine whether the bottled spirits agree in alcohol content and quantity (fill) with that stated on the label or bottle.

(2) If the regional director (compliance) finds that a proprietor's test procedures do not protect the revenue and ensure label accuracy of the bottled product, he or she may require corrective measures.

(b) *Variations in alcohol content and fill.* The proprietor shall rebottle, recondition or relabel spirits if the bottle contents do not agree with the respective data on the label or bottle as to:

(1) Quantity (fill), except for such variation as may occur in filling conducted in compliance with good commercial practice with an overall objective of maintaining 100 percent fill for spirits bottled; and/or

(2) Alcohol content, subject to a normal drop in alcohol content occurring during bottling operations not to exceed 0.25 percent-alcohol-by-volume for products containing solids in excess of 600 mg per 100 ml, or 0.15 percent-alcohol-by-volume for all other spirits. For example, a product with a solids content of less than 600 mg per 100 ml, labeled as containing 40 percent-alcohol-by-volume, would be acceptable if the test for alcohol content found that it contained 39.85 percent-alcohol-by-volume.

(c) *Records.* Proprietors shall record the results of all tests of alcohol content and quantity (fill) in the record required by § 19.750.

Authority: Sec. 201, Pub. L. 85-859, 72 Stat. 1356, as amended, 1394, as amended (26 U.S.C. 5201, 5301).

7A. Paragraph (b) of § 19.395 is revised to read as follows:

§ 19.395 Labels for export spirits.

* * * * *

(b) Proof or percent-alcohol-by-volume of the spirits;

* * * * *

7B. Effective on October 10, 1988, paragraph (b) of § 19.395 is revised to read as follows:

§ 19.395 Labels for export spirits.

* * * * *

(b) Percent-alcohol-by-volume of the spirits;

* * * * *

8A. The first sentence of § 19.643 is replaced by the following two sentences which read as follows:

§ 19.643 Brand name, kind, alcohol content, and State of distillation.

The brand name, kind as set out in 27 CFR Part 5, and alcohol content, expressed in proof or in percent-alcohol-by-volume, shall be shown on the label. Products such as "Rock and Rye" or similar products containing a significant amount of solid material shall state the alcohol content at the time of bottling as follows: "Bottled at ____ percent-alcohol-by-volume" or "Bottled at ____ proof. * * *"

8B. Effective on October 10, 1988, § 19.463 is revised to read as follows:

§ 19.463 Brand name, kind, alcohol content, and State of distillation.

(a) *Brand name and kind.* The label of distilled spirits shall state the brand name and kind, as set out in 27 CFR Part 5.

(b) *Alcohol content.* (1) *Mandatory statement.* The label of distilled spirits shall state the alcohol content in percent-alcohol-by-volume. Products such as "Rock and Rye" or similar products containing a significant amount of solid material shall state the alcohol content at the time of bottling as follows: "Bottled at ____ percent-alcohol-by-volume."

(2) *Optional statement.* In addition, the label may also state the alcohol content in degrees of proof if this information appears in direct conjunction (i.e. with no intervening material) with the statement expressed in percent-alcohol-by-volume. If both forms of alcohol content are shown, the optional statement in degrees of proof shall be placed in parentheses, in brackets, or otherwise distinguished from the mandatory statement in percent-alcohol-by-volume to emphasize the fact that both expressions of alcohol content mean the same thing.

(c) *State of distillation.* (1) *Mandatory Statement.* If a whisky produced in the United States was not produced in the State shown on the label, the label shall show the State of distillation, except as provided by paragarph (c)(2) or (c)(3) of this section. The Director, may, however, require the State of distillation to be shown on the label or permit such other labeling as may be necessary to preclude any misleading or deceptive impression which might otherwise be created as to the actual State of distillation.

(2) *Exceptions.* The State of distillation is not required to be shown on labels of "blended whisky", "a blend of straight whiskies", "spirit whisky", "light whisky", or "blended light whisky". The State of distillation may be prohibited on certain labels of "light whisky" or "blended light whisky", in accordance with paragraph (c)(3) of this section.

(3) *Prohibited statement.* The State of distillation may not be shown, except as part of the name and address required by 27 CFR 5.36(a), on labels of "light whisky" or "blended light whisky" produced in a State which the Director finds to be associated by consumers with an American type whisky.

Authority: Sec. 201, Pub. L. 85-859, 72 Stat. 1356, as amended (26 U.S.C. 5201).

9. Effective on October 10, 1988, § 19.750 is revised to read as follows:

§ 19.750 Records of alcohol content and fill tests.

(a) Proprietors shall record the results of all tests of alcohol content and quantity (fill) conducted.

(b) The record shall be maintained in a manner and provide information that will enable ATF officers to determine whether the proprietor has complied with the provisions of § 19.386 by:

(1) Monitoring operations by conducting alcohol content and fill tests; and

(2) Employing procedures to correct variations in alcohol content and fill.

(c) Alcohol content and fill test records shall contain, at a minimum, the following information:

(1) Date and time of test;
(2) Bottling tank number;
(3) Serial number of bottling record;
(4) Bottling line designation;
(5) Size of bottle;
(6) Number of bottles tested;
(7) Labeled alcohol content;
(8) Alcohol content found by the test;
(9) Percentage of variation from 100 percent fill; and
(10) Corrective action taken, if any.

Sec. 201, Pub. L. 85-859, 72 Stat. 1395, as amended (26 U.S.C. 5555); Sec. 807(a), Pub. L. 96-39 (26 U.S.C. 5207).

Signed:

W.T. Drake,
Acting Director.

September 8, 1986.

Approved: September 26, 1986
Francis A. Keating II,
Assistant Secretary (Enforcement)

(Filed by the Office of the Federal Register on October 9, 1986, 8:45 am and published in the Federal Register for October 10, 1986, 51 F.R. 36392)

TITLE 27—ALCOHOL, TOBACCO PRODUCTS AND FIREARMS—CHAPTER I—BUREAU OF ALCOHOL, TOBACCO AND FIREARMS, DEPARTMENT OF THE TREASURY

Bell Mountain Viticultural Area

T.D. ATF 238

27 CFR Part 9

AGENCY: Bureau of Alcohol, Tobacco and Firearms, Treasury.

ACTION: Final rule; Treasury decision.

SUMMARY: The Bureau of Alcohol, Tobacco and Firearms (ATF) has decided to establish a viticultural area in Texas to be known as "Bell Mountain." This decision is the result of a petition submitted by Mr. Robert P. Oberhelman, a grape grower in the area. The establishment of viticultural areas and the subsequent use of viticultural area names as appellations of origin in wine labeling and advertising enables winemakers to label wines more precisely and helps consumers to better identify the wines they purchase.

EFFECTIVE DATE: November 10, 1986.

FOR FURTHER INFORMATION CONTACT: Mr. Steve Simon, FAA, Wine and Beer Branch, Bureau of Alcohol, Tobacco and Firearms, 1200 Pennsylvania Avenue, NW., Washington, DC 20226, (202-566-7626).

SUPPLEMENTARY INFORMATION:

Background

ATF regulations in 27 CFR Part 4 provide for the establishment of definite viticultural areas. The regulations also allow the name of an approved viticultural area to be used as an appellation of origin on wine labels and in wine advertisements.

Part 9 of 27 CFR provides for the listing of approved American viticultural areas, the names of which may be used as appellations of origin.

Section 4.25a(e)(1), Title 27 CFR, defines an American viticultural area as a delimited grape-growing region distinguishable by geographical features. Section 4.25a(e)(2) outlines the procedures for proposing an American viticultural area. Any interested person may petition ATF to establish a grape-growing region as a viticultural area.

Petition

ATF received a petition from Mr. Robert P. Oberhelman, president of Oberhelmann Vineyards, proposing an area in Gillespie County, Texas, as a viticultural area to be known as "Bell Mountain." The area contains about 5 square miles and is located along the southern and southwestern slopes of Bell Mountain, about 15 miles north of Fredericksburg, Texas. The area's winegrape acreage consists of about 45 acres on two vineyards. There is one bonded winery operating within the area.

Notice of Proposed Rulemaking

In response to the petition, ATF published a notice of proposed rulemaking, Notice No. 593, in the Federal Register on Tuesday, June 3, 1986 (51 FR 19854). That notice proposed establishment of the "Bell Mountain" viticultural area and solicited public comment concerning the proposal.

No comments have been received. Therefore, this document establishes the "Bell Mountain" viticultural area without change from the proposal in Notice No. 593.

Name of the Area

The following evidence, submitted by the petitioner, establishes that the new viticultural area is known by the name of "Bell Mountain":

(a) The mountain on which the viticultural area is located was first given the name "Bell Mountain" by early settlers of the area in the mid nineteenth century.

(b) The mountain has been labeled with the name on maps of the U.S. Geological Service since 1885, when the first such map was published for the area. At an elevation of 1,956 feet, Bell Mountain is the highest point in the local area.

Geography of the Area

The following evidence shows that the new viticultural area is distinguished geographically from the surrounding areas:

(a) To the north and northeast, the area is distinguished by the steepness of the mountain slopes outside the boundaries of the area. Further, soil conditions outside the area preclude viticulture on those other slopes of Bell Mountain. The petition states: "The granite protrudes through the ground surface profusely on the Peak's northern slope, therefore making tillage impossible. For this reason, only the slopes to the south and southwest are included in the boundary of the proposed Viticultural Area."

(b) In other directions, the viticultural area is distinguished by soil types and by the topographical limits of the slopes of Bell Mountain. With respect to soil, the petition states as follows:

The soils within the boundaries of the proposed Viticultural Area are identified on the map as "pp-Pedernales-Pontotoc Association". The description reads "Non-Calcareous, sandy, loam soils, with light sandy clay subsoil. Udic Palenstalfs; Typic Rhodustaifs". These soils are unique in the general area referred to as the "Hill Country" or the Edwards Plateau in that they are slightly acid, whereas most of the soils are calcareous, or lime-bearing.

In support of this statement, the petitioner submitted a copy of a soil map from the book, *Eastern Hill Country Resource Conservation & Development Project*, published by the U.S. Department of Agriculture in 1968. This map shows that the proposed viticultural area boundaries correspond approximately to the limits of the area with soils of the Pedernales-Pontotoc Association. This is the only occurrence of these soils shown anywhere on that map.

(c) In addition, the petition states that "The area is drier than the Pedernales valley to its south and the Llano valley to its north. It is also cooler due to its elevation, and constant breezes."

Boundaries of the Area

The boundaries of the "Bell Mountain" viticultural area may be found on one U.S.G.S. map of the 7.5 minute series, titled Willow City Quadrangle. The boundaries are described in new § 9.55, as added by this Treasury decision.

Miscellaneous

ATF does not want to give the impression by approving "Bell Mountain" as a viticultural area that it is approving or endorsing the quality of the wine from this area. ATF is approving this area as being distinct but not better than other areas. By approving this area, ATF will allow wine producers to claim a distinction on labels and advertisements as to the origin of the grapes. Any commercial advantage can only come from consumer acceptance of "Bell Mountain" wines.

* * * * *

List of Subjects in 27 CFR Part 9

Administrative practice and procedures, Consumer protection, Viticultural areas, Wine.

Drafting Information

The principal author of this document is Mr. Steve Simon of the FAA, Wine and Beer Branch, Bureau of Alcohol, Tobacco and Firearms.

Issuance

Accordingly, 27 CFR Part 9 is amended as follows:

PART 9—AMERICAN VITICULTURAL AREAS

Paragraph A. The authority citation for Part 9 continues to read as follows:

Authority: 27 U.S.C. 205.

Par. B. The table of sections in 27 CFR Part 9, Subpart C, is amended to add the title of § 9.55, to read as follows:

* * * * *

Subpart C—Approved American Viticultural Areas

Sec.

* * * * *

9.55 Bell Mountain.

* * * * *

Par. C. Subpart C of 27 CFR Part 9 is amended by adding § 9.55, which reads as follows:

§ 9.55 Bell Mountain.

(a) *Name.* The name of the viticultural area described in this section is "Bell Mountain."

(b) *Approved map.* The appropriate map for determining the boundaries of the Bell Mountain viticultural area is one U.S.G.S. map, titled: Willow City Quadrangle, 7.5 minute series, 1967.

(c) *Boundary*—(1) *General.* The Bell Mountain viticultural area is located in Gillespie County, Texas. The starting point of the following boundary description is the summit of Bell Mountain (1,956 feet).

(2) *Boundary Description*—(i) From the starting point, the boundary proceeds due southward for exactly one half mile;

(ii) Then southeastward in a straight line to the intersection of Willow City Loop Road with an unnamed unimproved road, where marked with an elevation of 1,773 feet;

(iii) Then generally southward along Willow City Loop Road (a light-duty road) to Willow City.

(iv) Then continuing southward and westward along the same light-duty road to the intersection having an elevation of 1,664 feet;

(v) Then continuing westward along the light-duty road to the intersection having an elevation of 1,702 feet;

(vi) Then turning southward along the light-duty road to the intersection having an elevation of 1,736 feet;

(vii) Then turning westward along the light-duty road to the intersection having an elevation of 1,784 feet;

(viii) Then turning southward and then westward, following the light-duty road to its intersection with Texas Highway 16, where marked with an elevation of 1,792 feet;

(ix) Then due westward to the longitude line 98° 45′;

(x) Then northward along that longitude line to a point due west of an unnamed peak with an elevation of 1,784 feet;

(xi) Then due eastward to the summit of that unnamed peak;

(xii) Then in a straight line eastward to the intersection of an unnamed unimproved road with Texas Highway 16, where marked with an elevation of 1,822 feet;

(xiii) Then following that unnamed road, taking the right-hand fork at an intersection, to a point due west of the summit of Bell Mountain;

(xiv) Then due eastward to the summit of Bell Mountain.

Signed: September 11, 1986.

Stephen E. Higgins,
Director.

Approved: September 23, 1986.

Michael H. Lane,
Deputy Assistant Secretary, Regulatory, Trade, and Tariff Enforcement.

(Filed by the Office of the Federal Register on October 9, 1986, 8:45 am and published in the Federal Register for October 10, 1986, 51 F.R. 36398)

TITLE 27—ALCOHOL, TOBACCO PRODUCTS AND FIREARMS—CHAPTER I—BUREAU OF ALCOHOL, TOBACCO AND FIREARMS, DEPARTMENT OF THE TREASURY

Reporting Taxes Due to the Governments of Puerto Rico and the Virgin Islands on Bulk Distilled Spirits

TD ATF-239

27 CFR Part 19

AGENCY: Bureau of Alcohol, Tobacco and Firearms (ATF), Treasury.

ACTION: Final rule (Treasury decision).

SUMMARY: This final rule revises the reporting requirements of bulk Puerto Rican and Virgin Islands spirits, and rum imported from all other areas bottled by domestic distilled spirits plants. The reporting procedure forms the basis for the transfer of excise taxes to the Treasuries of Puerto Rico and the Virgin Islands.

EFFECTIVE DATE: January 1, 1987.

FOR FURTHER INFORMATION CONTACT: James Stephens or Robert White, Distilled Spirits and Tobacco Branch, (202) 566-7531; Bureau of Alcohol, Tobacco and Firearms, Distilled Spirits and Tobacco Branch, Ariel Rios Federal Building, 1200 Pennsylvania Avenue, NW., Washington, DC 20226.

SUPPLEMENTARY INFORMATION:

Background

Prior to the implementation of the Distilled Spirits Tax Revision Act of 1979 (Title VIII of the Trade Agreements Act of 1979, Pub. L. 96-39) on January 1, 1980, the excise taxes on bulk distilled spirits that were produced by distilled spirits plant permittees, imported, or brought into the United States were determined at the time the bulk spirits were withdrawn from the bonded storage area of a distilled spirits plant. The spirits were reported on ATF Form 179, Withdrawal of Spirits Tax Determined, prior to processing and bottling operations. For bulk rum and spirits brought into the United States from Puerto Rico and the Virgin Islands, the ATF regional office personnel prepared summary reports based on the Forms 179, and made adjustments to the amounts reported (i.e., operational losses, destruction, etc.), to determine the amount of taxes that would be transferred from the United States to the Treasuries of Puerto Rico and the Virgin Islands.

Impact of Public Law 98-67, Title II

Prior to the passage of the Caribbean Basin Economic Recovery Act (Pub. L. 98-67, Title II) on August 5, 1983, the reporting procedures required by 27 CFR 19.778 only affected Puerto Rican rum, other Puerto Rican spirits, and Virgin Islands spirits. Effective July 1, 1983, this Act mandated that the excise taxes collected on all rum imported into the United States are to be paid over to the Treasuries of Puerto Rico and the Virgin Islands by means of a formula prescribed by regulation. The purpose of this portion of the Act was to ensure that the economies of Puerto Rico and the Virgin Islands are not adversely affected by the elimination of duties on selected goods imported into the United States from certain countries in the Caribbean basin area.

Impact of Public Law 98-369, Title VI

Prior to passage of the Deficit Reduction Act of 1984 (Pub. L. 98-369, Title VI) on July 18, 1984, the reporting procedures required by 27 CFR 19.778 affected all Puerto Rican and Virgin Islands rum and spirits brought into the United States from these two possessions. Effective March 1, 1984, as to Virgin Islands rum and spirits, and January 1, 1985, as to rum and spirits from Puerto Rico, this Act mandated that any article containing distilled spirits shall in no event be treated as produced in Puerto Rico or the Virgin Islands unless at least 92 percent of the alcoholic content in such article is attributable to rum. The purpose of this portion of the Act was to limit the cover over of Federal excise tax revenues to distilled spirits having an economic connection with Puerto Rico or the Virgin Islands.

Existing Regulations

With the implementation of the Distilled Spirits Tax Revision Act of 1979 and temporary regulations issued in T.D. ATF-62 (44 FR 71613), the previous regulations in 27 CFR Part 201 were revised and recodified as 27 CFR Part 19. The final regulations were issued in T.D. ATF-198 (50 FR 8456).

The present law and regulations extended the bonded premises of a distilled spirits plant to include all operations from original production through bottling operations. Therefore, the excise, taxes on distilled spirits are determined at the time the spirits are physically removed from the plant premises.

The point of tax determination for Puerto Rican and Virgin Islands rum and spirits, and rum imported from all other areas under the previous law and regulations occurred when the bulk spirits were removed from bonded storage prior to processing (including bottling) operations. Under the present law and regulations the reporting point for these spirits, was also made prior to processing and bottling. This provided a smooth transition from the previous system to the present regulations.

Currently, proprietors of distilled spirits plants are required under 27 CFR 19.778 to maintain a separate accounting in proof gallons of Puerto Rican and Virgin Islands spirits, and rum imported from all other areas, that are received into the processing account for nonindustrial use.

Each month proprietors determine the percentage of overall gains or losses for all nonindustrial spirits received in their processing account. The proof gallons of Puerto Rican and Virgin Islands spirits, and rum imported from all other areas received in processing each month are adjusted by that percentage. Proprietors file monthly reports on ATF Form 5110.28, Monthly Report of Processing Operations, showing separately the adjusted proof gallons of Puerto Rican spirits, Virgin Islands spirits, and rum imported from all other areas received in processing. ATF regional office personnel compile these reports, together with ATF Forms 5110.11, Monthly Report of Storage Operations reflecting bulk Puerto Rican spirits, Virgin Islands spirits, and rum imported from all other areas removed tax determined from the storage account, and prepare a summary report that forms the basis for the remittance of excise taxes from the United States to the Treasuries of Puerto Rico and the Virgin Islands.

The new regulations require proprietors of distilled spirits plants to report the quantities of Puerto Rican and Virgin Islands spirits, and rum imported from all other areas when such spirits are actually removed from the processing account taxpaid or tax determined. Since the system currently used only approximates tax determinations by making adjustments for processing losses computed on the basis of all products in processing, it is potentially imprecise in accounting for actual quantities of Puerto Rican and Virgin Islands spirits, and rum imported from all other areas removed taxpaid or tax determined. This fact substantiates the need for the changes required by this Treasury Decision.

Presently, adjustments must be made to the excise tax remittances to Puerto Rico and the Virgin Islands for voluntary destructions, export transactions, accidental losses, and claims for drawback filed by manufacturers of nonbeverage products. The new system eliminates adjustments for any occurrences involving Puerto Rican and Virgin Islands spirits, and rum imported from all other areas prior to tax determination, such as voluntary destructions, accidential losses prior to tax determination, and removals without payment of tax for exportation. Adjustments to the remittances will still be required for claims that are filed for accidental losses of spirits in these categories that have been tax determined but not removed from bonded premises, drawback of the excise taxes for spirits exported after tax determination, drawback of the excise taxes paid on spirits used in the manufacture of nonbeverage products; and claims for the excise taxes paid on spirits returned to bond.

Although proprietors will be required to adjust their recordkeeping procedures to account for quantities of these spirits contained in products removed from their processing accounts taxpaid or tax determined on ATF F 5110.28, their total recordkeeping burden will not be substantially increased. Regulations in Part 19 currently require that spirits removed from bonded premises be recorded by kind and quantity in the daily records; therefore, any additional records and recordkeeping required by this final rule should be available to distilled spirits plant proprietors in their daily records.

Discussion of Comments

ATF published a notice of proposed rulemaking in the **Federal Register** on April 13, 1981 (46 FR 21624), requesting comments to a proposed system of reporting Puerto Rican and Virgin Islands spirits for excise tax remittance purposes by accounting for them in two distinct categories. The first category would contain spirits mixed in processing with other alcoholic ingredients, and the second category would account for spirits not mixed in processing with any other alcoholic ingredient. Spirits in the first category would be reported upon completion of bottling or packaging, whereas spirits in the second category would be reported when removed from bond on tax payment or tax determination.

The consensus of the comments received subsequent to Notice No. 370 favored a new system of reporting taxes due to Puerto Rico and the Virgin Islands. Proprietors of the distilled spirits plants that responded to the notice suggested that instead of requiring a dual system of accounting for the spirits from Puerto Rico and the Virgin Islands, all quantities of these spirits contained in final products should be reported at actual tax determination on removal from the bonded premises. One proprietor stated that using this system would actually save the company 3 to 4 clerical hours per month at each plant, compared to the current system.

Suggestions were received from proprietors of distilled spirits plants to simplify or alter the reporting procedure for these spirits. Taking all of these recommendations into consideration, ATF issued an amended notice of proposed rulemaking incorporating the changes suggested in comments received to Notice No. 370.

ATF published the amended notice of proposed rulemaking in the Federal Register on February 14, 1985 (50 FR 6200), requesting comments on reporting all Puerto Rican and Virgin Islands spirits, and rum imported from all other areas at the time of tax determination on a revised ATF Form 5110.28, Monthly Report of Processing Operations.

We received two comments from distilled spirits plant proprietors to Notice No. 557. One proprietor stated that the revised procedure would not present any hardship. Another proprietor opposed the proposed procedure on the grounds that it would require the maintenance of additional records where spirits of different kinds are mixed in processing. They also felt that the one-time physical inventory required at the time of change in procedure would be time consuming.

Overall, comments to both notices were favorable and proprietors felt that the present system of reporting should be revised. Experience has shown that the present system is imprecise and should be revised. ATF feels that the system of reporting proposed in Notice No. 557 will ensure the accurate reporting of Federal excise taxes to be transferred to the Treasuries of Puerto Rico and the Virgin Islands. Accordingly, the regulations are revised as proposed in Notice No. 557.

Transition Plan

At the time of conversion to the new tax reporting system, distilled spirits plants will be in possession of Puerto Rican and Virgin Islands spirits, and rum imported from all other areas on which the taxes have already been credited to the insular treasuries. These spirits which have already been reported when they were transferred to a processing account, will be reported again at the actual time of tax determination. Therefore, proprietors are required to take one-time inventories of spirits in these categories that are in the processing account, including bottled and packaged goods in the finished products account, on the date of conversion to the new system. These inventories will be reported in a letter to the regional director (compliance), and will be used by ATF to offset the double reporting of taxes to be credited to the insular treasuries.

Payments to the Virgin Islands Treasury for products manufactured in that possession are made in advance and adjusted at the end of each fiscal year; consequently, the conversion inventory amounts will be taken as decreasing adjustments at the end of the fiscal year. Payments to the Puerto Rican Treasury for products manufactured in that possession, and payments to both of these treasuries for rum imported from all other areas, are made monthly; therefore, the inventory amounts will be amortized to reduce the economic effect of the conversion. The amortization plan is discussed in the next section of the preamble.

In order to ensure a smooth transition to this new system, to impose a minimal burden on domestic bottlers, and to ease the impact of the conversion on these treasuries, the following transition plan and new reporting procedures shall be used.

During the last month under the old system proprietors shall continue to report these spirits transferred into the processing account, adjusted by the net processing loss or gain, as previously reported on ATF F 5110.28, Monthly Report of Processing Operations.

On the first day of the new system, proprietors shall begin reporting tax determinations of these spirits, including quantities of these spirits contained as ingredients of other distilled spirits products tax determined. The revised regulations allow for standard reporting, averaging, or any approved alternative for reporting mixed products.

The standard reporting method of determining the amount of these spirits contained as ingredients of other products shall be computed by using the minimum quantity of these spirits as shown in the approved formula for each product removed tax determined. The averaging method allows distilled spirits plant proprietors to use the average quantity of these spirits contained in batches of each type (formulation) of mixed products that were produced and bottled during the preceding six-month period. This average shall be adjusted each month to include only the immediately preceding six-month period.

Beginning with the first month of the new system, proprietors shall report total monthly tax determinations of Puerto Rican and Virgin Islands spirits, and rum imported from all other areas, on ATF F 5110.28, which reflects revised captions in Part III.

Amortization Plan

Each processor shall take complete physical inventories of all Puerto Rican spirits, Virgin Islands spirits, and rum imported from all other areas in the processing account as of close of business the last day under the old system. The inventories may be taken within a period of a few days before or after this date if such period does not include more than one complete weekend and necessary adjustments are made to reflect pertinent transactions so that the recorded inventories will agree with the actual quantities of such spirits on hand in processing as of this date. The results of these inventories shall be reported in a letter to the regional director (compliance).

The conversion inventories will be used as decreasing adjustments to monthly taxable removal payments of these spirits that will be due to Puerto Rico and the Virgin Islands; therefore, this plan will amortize the decreasing adjustments over a period of twelve months.

To illustrate this amortization plan, the following example is given. The closing inventory of Puerto Rican spirits contained in the processing account is 500,000 pg × $10.50 = $5,250,000. Rather than deduct this from payments to Puerto Rico in one lump sum, it will be amortized over 12 months, amounting to a deduction of $437,500 per month from the amount due the Puerto Rican Treasury. At the end of the 12 months, the entire conversion inventory amount ($5,250,000) will have been deducted. At this time, ATF will determine the amount of the closing inventories removed from the processing accounts for purposes other than tax payment or tax determination for domestic consumption, and make appropriate increasing adjustments to the insular government accounts.

The distilled spirits plant proprietors will only be responsible for reporting the conversion inventory quantities to the ATF regional director (compliance). Personnel of the ATF regional offices will be responsible for computing the amortization quantities, and deducting them each month from the summary report they prepare.

* * * * *

Disclosure

Copies of the notices of proposed rulemaking, all written comments, and this final rule are available for public inspection during normal business hours at: Office of Public Affairs and Disclosure, Room 4406, Ariel Rios
Federal Building, 1200 Pennsylva
Avenue, NW., Washington, DC 202

List of Subjects in 27 CFR Part 1

Administrative practice and pro
dure, Alcohol and alcoholic bevera
Authority delegations, Claims, Che
icals, Customs duties and inspecti
Electronic fund transfers, Excise tax
Exports, Gasohol, Imports, Labeli
Liquors, Packaging and containe
Puerto Rico, Reporting and reco
keeping requirements, Research, Se
rity measures, Spices and flavori
Surety bonds, Transportation, Vir
Islands, Warehouses, Wine.

Drafting Information

The principal author of this do
ment is James Stephens, Distilled Sp
its and Tobacco Branch, Bureau
Alcohol, Tobacco and Firearms.

Authority and Issuance

For the reasons set out in the p
amble, Part 19, Subchapter A, Chap
I of Title 27, Code of Federal Reg
lations is amended as set forth below

PART 19—DISTILLED SPIRI PLANTS

Paragraph 1. The authority citati
for Part 19 continues to read as follow
Authority: 19 U.S.C. 81c, 1311;
U.S.C. 5001, 5002, 5004-5006, 500
5041, 5061, 5062, 5066, 5101, 511
5113, 5171-5173, 5175, 5176, 517
5181, 5201-5207, 5211-5215, 522
5223, 5231, 5232, 5235, 5236, 524
5243, 5271, 5273, 5301, 5311-531
5362, 5370, 5373, 5501-5505, 555
5555, 5559, 5561, 5562, 5601, 561
5682, 6001, 6065, 6109, 6302, 631
6676, 7510, 7805; 31 U.S.C. 930
9303, 9304, 9306.

Par. 2. The table of contents in Pa
19 is amended to revise the heading
§ 19.778 to read as follows:

* * * * *

§ 19.778 Removal on or after January 1, 1987 of Puerto Rican and Virgin Islands spirits, and rum imported from all other areas.

* * * * *

Par. 3. Section 19.778 is revised to read as follows:

§ 19.778 Removal on or after January 1, 1987 of Puerto Rican and Virgin Islands spirits, and rum imported from all other areas.

(a) *General.* The proprietor shall maintain separate accounts, in proof gallons, of Puerto Rican spirits having an alcoholic content of at least 92 percent rum, of Virgin Islands spirits having an alcoholic content of at least 92 percent rum, and of rum imported from all other areas removed from the processing account on determination of tax. Quantities of spirits in these categories that are contained in products mixed in processing with other alcoholic ingredients may be determined by using the methods provided in paragraphs (b), (c), or (d) of this section. The proprietor shall report these quantities monthly on Form 5110.28, Monthly Report of Processing Operations, as provided in § 19.792.

(b) *Standard method.* For purposes of the separate accounts, quantities of spirits in the above categories may be determined based on the least amount of such spirits which may be used in each product as stated in the approved formula, ATF F 5110.38.

(c) *Averaging method.* For purposes of the separate accounts, quantities of spirits in the above categories may be determined by computing the average quantity of such spirits contained in all batches of the same product formulation manufactured during the preceding 6-month period. The average shall be adjusted at the end of each month so as to include only the preceding 6-month period.

(d) *Alternative method.* Distilled spirits plant proprietors who wish to use an alternative method for determining the amount of spirits in these categories contained as ingredients of other distilled spirits products shall file an application with the Director. The written application shall specifically describe the proposed alternative method, and shall set forth the reasons for using the alternative method.

(e) *Transitional rule.* On January 1, 1987 the proprietor shall take physical inventories of all Puerto Rican spirits, Virgin Islands spirits, and rum imported from all other areas which were received into the processing account prior to that date. These inventories may be taken as provided in § 19.402 (a)(2). The results of the inventories shall be submitted in a letter to the regional director (compliance) within 30 days of the required date of the inventories.

(Sec. 201, Pub. L. 85-859, 72 Stat. 1394, as amended (26 U.S.C. 5555))

Signed: August 15, 1986.

Steven E. Higgins,
Director.

Approved: September 16, 1986.

Michael H. Lane,
Acting Assistant Secretary (Enforcement).

(Filed by the Office of the Federal Register on November 3, 1986, 8:45 am and published in the Federal Register for November 4, 1986, 51 F.R. 40023)

TITLE 27—ALCOHOL, TOBACCO PRODUCTS AND FIREARMS—CHAPTER 1—BUREAU OF ALCOHOL, TOBACCO AND FIREARMS, DEPARTMENT OF THE TREASURY

NORTH FORK OF LONG ISLAND VITICULTURAL AREA

T.D. ATF 240

27 CFR Part 9

AGENCY: Bureau of Alcohol, Tobacco and Firearms (ATF), Treasury.

ACTION: Final rule: Treasury decision.

SUMMARY: This final rule establishes a viticultural area known as the North Fork of Long Island, located in Suffolk County in eastern Long Island, New York. The viticultural area includes all of the land areas in the Townships of Riverhead, Shelter Island and Southold. The petition was submitted by a group of Long Island grape growers and bonded winery owners located within the boundaries of the viticultural area. ATF feels that the establishment of viticultural areas and the subsequent use of viticultural area names as appellations of origin in wine labeling and advertising will help consumers identify the wines they may purchase. It will also allow wineries to better designate the specific grape-growing area where their wines come from.

EFFECTIVE DATE: November 10, 1986.

FOR FURTHER INFORMATION CONTACT: Edward A. Reisman, ATF Specialist, FAA, Wine and Beer Branch, Bureau of Alcohol, Tobacco and Firearms, Ariel Rios Federal Building, 1200 Pennsylvania Avenue, N.W., Washington, DC 20226 (202-566-7626).

SUPPLEMENTARY INFORMATION:

Background

On August 23, 1978, ATF published Treasury Decision ATF-53 (43 FR 37672, 54624) revising regulations in 27 CFR Part 4. These regulations also allow the name and location of an approved viticultural area to be used as an appellation of origin on wine labels and in wine advertisements.

On October 2, 1979, ATF published Treasury Decision ATF-60 (44 FR 56692) which added a new Part 9 to 27 CFR, providing for the listing of approved American viticultural areas, the names of which may be used as appellations of origin.

Section 4.25(e)(1) Title 27, CFR, defines an American viticultural area as a delimited grape-growing region distinguishable by geographical features, the boundaries of which have been delineated in Subpart C of Part 9.

Section 4.25(e)(2), outlines the procedure for proposing an American viticultural area. Any interested person may petition ATF to establish a grape-growing region as a viticultural area. The petition should include—

(a) Evidence that the name of the proposed viticultural area is locally and/or nationally known as referring to the area specified in the petition;

(b) Historical or current evidence that the boundaries of the viticultural area are as specified in the petition;

(c) Evidence relating to the geographical characteristics (climate, soil, elevation, physical features, etc.) which distinguish the viticultural features of the proposed area from surrounding areas;

(d) A description of the specific boundaries of the viticultural area, based on features which can be found on United States Geological Survey (U.S.G.S.) maps of the largest applicable scale; and

(e) A copy of the appropriate U.S.G.S. maps with the boundaries prominently marked.

Petition

ATF was petitioned for the North Fork of Long Island viticultural area by the Long Island Grape Growers Association located in Riverhead, New York. Just across the bay (south) from the Nortn Fork of Long Island viticultural area is The Hamptons, Long Island viticultural area. The area includes all of the land in the (South Fork) Townships of Southampton and East Hampton.

The North Fork of Long Island viticultural area consists of the Townships of Riverhead, Shelter Island and Southold (including all mainland and island areas). The total area of this viticultural area consists of 158.5 square miles or 101,440 acres of land. There are 5 bonded wineries operating within the viticultural area.

The basis for approval of this viticultural area was supported by the following evidence that was submitted by the petitioner:

Evidence of Name

The name North Fork is locally used to describe the land area on the North Shore of Long Island beginning at Riverhead Township and extending east for approximately 40 miles to Orient Point. This description is supported by many publications, businesses, and landmarks which use the name North Fork to distinguish this region from the rest of Long Island.

Evidence of Boundaries

The geographic area of the North Fork, although attached to a larger island, is a peninsula. This is due to the fact that three of its boundaries are surrounded by water; the Long Island South to the north, the Peconic Bay to the south, and the Atlantic Ocean to the east. The western boundary is the 6.5 mile long boundary, line separating Brookhaven and Riverhead Townships. The North Fork is 6 miles wide at its widest point and less than .5 mile wide at its narrowest point. The townships of Riverhead (78 square miles), Shelter Island (11.5 square miles) and Southold (69 square miles) make up the total area of the viticultural area. Shelter Island, although a separate land area from the mainland of Long Island, was included in the boundaries of the North Fork of Long Island viticultural area because of its immediate proximity to the mainland. Also, another reason for its inclusion in the viticultural area is because it is composed of soil associations and climate conditions similar to those on the North Fork of Long Island.

The boundaries of the "North Fork of Long Island" viticultural area may be found on five U.S.G.S. maps. Having verified the boundaries, ATF agrees that they meet the requirements for approval of the "North Fork of Long Island" as an American viticultural area.

Area History

The petitioner provided documentation that grape growing and limited wine production on the North Fork dates back to the settlement of the area. But more noteworthy, it was not until recent years that there have been commercial vineyards on the North Fork of Long Island, some of which are vinifera bearing. The total grape acreage on the North Fork is approximately 1000 acres, with more plantings scheduled for the future.

Evidence of Geographical Characteristics

Climate

The major distinct geographical characteristic of the North Fork when comparing it with the surrounding area is its climate. More specifically, it is the sea that surrounds the North Fork which makes it a distinct grape growing area. The surrounding waters render the viticultural area more temperate than many other places in the same latitude in the interior. The viticultural area is regularly fanned by a breeze coming off the surrounding waters.

The air modulates the heat in the summer and the cold in the winter.

The climate classification of the North Fork is "humid continental." The North Fork climate is greatly influenced by the Atlantic Ocean. The ocean breezes over the viticultural area extend the period of freeze-free temperatures, reduce the range of daily and annual temperatures, and increase the amount of winter precipitation relative to summer.

Although the North and South Forks of Long Island are relatively close together, there are many climatic differences which exist between these two areas. These differences are due to the unique topography of the eastern end of Long Island and the relationship of the two forks to the Atlantic Ocean and the Long Island Sound.

The single most important difference between the North Fork and South Fork is the number of days between the spring and fall frosts. In data taken from local weather stations, for the period 1973-1983, the growing season averages 195 days at Riverhead (North Fork), 201 days at Greenport (North Fork) and 188 days at Bridgehampton (South Fork). In 7 out of 11 years recorded, there was anywhere from 1 to over 3 weeks longer growing season on the North Fork as compared to the South Fork.

The climate on the rest of Long Island is also significantly different from the climate of the North Fork. The following data shows the differences in growing seasons that can occur from eastern Long Island to New York City.

Days of Growing Season 1973-1982 Averages

Riverhead (North Fork)	194
Bridgehampton (South Fork)	184
Brookhaven Lab (10 miles west of North Fork)	152
Patchogue (20 miles southwest of North Fork)	177
Mineola (50 miles west of North Fork)	206
Central Park NYC (60 miles west of North Fork)	222

The Long Island Sound, Atlantic Ocean, and bay areas are the main reasons for the North Fork's buffered climate. As the forks merge into the main body of Long Island, the effect of these waters is greatly diminished, especially with southwest winds prevailing. This is evident in the previous data for both Brookhaven and Patchogue. Brookhaven, located 10 miles west of the North Fork, can have as much as 50 days less growing season than Riverhead. Patchogue (located on the south shore about 20 miles from the North Fork) can also be seen to be as much as 45 days less, with most seasons being around 1-2 weeks less than Riverhead. The data given for Mineola (a large suburban area in Nassau County about 50 miles west) and Central Park-New York City (located 60 miles west), show the increasing effect of the buffering ocean winds as the western end of the island begins to narrow once again. A great deal of the effect as well, is due to the great amount of industrial warmth supplied from what is mostly an urban area.

Soils

The second distinctive characteristic of the North Fork is its soils. The North Fork has distinctly different soil types than the South Fork (The Hamptons). The difference in soil types begins north of the Peconic River and continues eastward toward Orient Point. The major soil types are found on the North Fork as follows:

1. *Carver-Plymouth-Riverhead Association.*
2. *Haven-Riverhead Association.*
3. *Montauk-Haven-Riverhead Association.*

The soils of the South Fork (The Hamptons), on the other hand, are somewhat different, and many more associations are present:

1. *Plymouth-Carver Association.*
2. *Bridgehampton-Haven Association.*
3. *Montauk-Montauk, Sandy Variant-Bridgehampton Association.*
4. *Montauk, Sandy Variant-Plymouth Association.*
5. *Montauk-Haven-Riverhead Association.*

The remainder of the soils on the South Fork consist of the Dune Land-Tidal Marsh-Beach Association, which make up the beach and marshland areas. At the Town of Brookhaven/Riverhead boundary line where the forks meet, there is still some slight separation of the different soils associations. Westward from here and into New York City, the soil associations become even more foreign to those found on the eastern end of Long Island. While various soil types found in western Long Island may be similar to those found on the North Fork, the encroachment of suburban development and industry on Long Island has made commercial agriculture and land available for it, almost nonexistent in the townships west of Brookhaven.

In general, the soils of the North Fork contain a smaller percentage of silt and loam than the soils found on the South Fork (The Hamptons). This accounts for the fact that South Fork soils have a greater water-holding capacity than North Fork soils and they require less irrigation. The soils of the North Fork are also generally slightly higher in natural fertility than the soils of the South Fork.

Based on the previous evidence, ATF agrees that one of the major geographical features of the North Fork is its distinct soils, which are different from soils of the surrounding area.

Discussion of Comments

On March 21, 1986, Notice No. 585 was published in the Federal Register with a 45-day comment period. In that notice ATF invited comments from all interested parties regarding the proposal to establish "The North Fork of Long Island" viticultural area. No comments were received from the public during the comment period.

Conclusion

To summarize, it is important that the specific grape growing areas of Long Island be recognized and set apart from one another in order to maintain individuality and also to inform the consumer. The evidence presented in the petition and the notice of proposed rulemaking supports the fact that the North Fork of Long Island region has within its boundaries distinct and unique grape growing conditions which entitle it to be a separate American viticultural area.

On the basis of the evidence provided by the petitioner, ATF finds "The North Fork of Long Island" viticultural area to be a delimited grape growing region distinguishable by geographical features.

* * * * *

Miscellaneous

ATF does not wish to give the impression by approving "The North Fork of Long Island" as a viticultural area that it is approving or endorsing the quality of the wine derived from this area. ATF is approving this area as being distinct and not better than other areas. By approving this area, wine producers are allowed to claim a distinction on labels and advertisements as to the origin of the grapes. Any commercial advantage gained can only come from consumer acceptance of wines from "The North Fork of Long Island."

List of Subjects in 27 CFR Part 9

Administrative practice and procedures, Viticultural areas, Consumer protection, Wine.

Drafting Information

The principal author of this document is Edward A. Reisman, FAA, Wine and Beer Branch, Bureau of Alcohol, Tobacco and Firearms.

Authority and Issuance

PART 9—[AMENDED]

27 CFR Part 9—American Viticultural Areas is amended as follows:

Paragraph 1. The authority citation for Part 9 continues to read as follows:

Authority: 27 U.S.C. 205.

Par. 2. The table of contents in 27 CFR Part 9, Subpart C, is amended to add the title of § 9.113 to read as follows:

Subpart C—Approved American Viticultural Areas

Sec.

* * * * *

9.113 North Fork of Long Island.

Par. 3. Subpart C, is amended by adding § 9.113 to read as follows:

Subpart C—Approved American Viticultural Areas

§ 9.113 North Fork of Long Island.

(a) *Name.* The name of the viticultural area described in this section is "North Fork of Long Island."

(b) *Approved maps.* The appropriate maps for determining the boundaries of the "North Fork of Long Island" viticultural area are 5 U.S.G.S. maps. They are entitled:

(1) Wading River, N.Y., 7.5 minute series, scaled at 1:24,000 edition of 1967.

(2) Riverhead, N.Y., 7.5 minute series, scaled at 1:24,000, edition of 1956.

(3) New York, N.Y.; N.J.; Conn., U.S., 1:250,000 series, scaled at 1:250,000, edition of 1960, revised 1979.

(4) Providence, R.I.; Mass.; Conn., N.Y., U.S., 1:250,000 series, scaled at 1:250,000, edition of 1947, revised 1969.

(5) Hartford, Conn.; N.Y.; N.J.; Mass., U.S., 1:250,000 series, scaled at 1,250,000, edition of 1962, revised 1975.

(c) *Boundaries.* The boundaries of the proposed viticultural area are as follows: The North Fork of Long Island viticultural area is located entirely within eastern Suffolk County, Long Island, New York. The viticultural area boundaries consist of all of the land areas of the North Fork of Long Island, New York, including all of the mainland, shorelines and islands in the Townships of Riverhead, Shelter Island, and Southold.

(1) The point of beginning is on the Wading River, N.Y., 7.5 minute series, U.S.G.S. map at the northern boundary of the Brookhaven/Riverhead Township line on the Long Island Sound (approximately 500 feet east of the mouth of the Wading River);

(2) The boundary goes south on the Brookhaven/Riverhead Town line for approximately 6.5 miles until it meets the Peconic River approximately 1 mile east of U.S. Reservation Brookhaven National Laboratory;

(3) Then the boundary travels east on the Peconic River (Brookhaven/Riverhead Town line) for 2.7 miles until it meets the Riverhead/Southampton Township line on the Riverhead, N.Y., U.S.G.S. map;

(4) It then goes east on the Riverhead/Southampton Township line for 4.2 miles until it reaches an area where the Peconic River widens north of Flanders;

(5) Then the boundary proceeds east to Orient Point then west along the shoreline, beaches, islands, and mainland areas of the North Fork of Long Island, described on the "New York," "Providence," and "Hartford"

U.S.G.S. maps until it reaches the Brookhaven/Riverhead Township line at the point of beginning. These boundaries consist of all the land (and isolated islands including without limitation, Wicopesset Island, Robins Island, Fishers Island, Great Gull Island, Plum Island, and Shelter Island) in the Townships of Riverhead, Shelter Island, and Southold.

Signed: September 10, 1986.

Stephen E. Higgins,
Director.

Approved: September 23, 1986.

Michael H. Lane,
Deputy Assistant Secretary, Regulatory, Trade and Tariff Enforcement.

(Filed by the Office of the Federal Register on October 9, 1986, 8:45 am and published in the Federal Register for October 10, 1986, 57 F.R. 36396)

TITLE 27—ALCOHOL, TOBACCO PRODUCTS AND FIREARMS—CHAPTER I—BUREAU OF ALCOHOL, TOBACCO AND FIREARMS, DEPARTMENT OF THE TREASURY.

Form Number Change for Forms 1648, 1649, and 1650

27 CFR Parts 4, 5, 7, 19, 240, 250, and 251

AGENCY: Bureau of Alcohol, Tobacco and Firearms, Department of the Treasury.

ACTION: Final rule, Treasury decision.

SUMMARY: The Bureau of Alcohol, Tobacco and Firearms (ATF) has combined and renumbered ATF Forms 1648, 1649, and 1650. The new number is ATF Form 5100.31. This Treasury decision amends ATF regulations to reflect the number change by substituting the new number for the old ones. The revision will not necessitate resubmission of any forms for approval.

EFFECTIVE DATE: November 28, 1986.

FOR FURTHER INFORMATION CONTACT: James Ficaretta or Steve Simon, FAA, Wine and Beer Branch, Bureau of Alcohol, Tobacco and Firearms, 1200 Pennsylvania Avenue, NW., Washington, DC 20226; (202) 566-7626.

SUPPLEMENTARY INFORMATION: For the convenience of industry, and in order to reduce Government paperwork, three official forms relating to label approval under the Federal Alcohol Administration Act have been combined into a single form. The three forms are: ATF Form 1648 ("Application for Certificate of Exemption from Label Approval"), ATF Form 1649 ("Application for and Certification of Label Approval Under Federal Alcohol Administration Act"), and ATF Form 1650 ("Certificate of Exemption from Label Approval Under the Federal Alcohol Administration Act"). The new form is ATF Form 5100.31, titled "Application for and Certification/Exemption of Label/Bottle Approval." Only very minor revisions have been made on the new form. Approvals already granted on the old forms shall continue to be valid. For the sake of clarity in regulations, ATF has decided to issue this Treasury decision, so that all regulations making reference to the obsolete forms may be amended to refer to the new form number.

Administrative Procedure Act

As authorized by Section 553 of Title 5 of the United States Code, the regulatory changes in this final rule are being made without prior notice. Public participation in these changes is deemed unnecessary, since this decision merely deletes references to obsolete forms and inserts instead the correct form reference. Therefore, ATF has determined that it is unnecessary to issue this rule with notice and public comment under 5 U.S.C. 553(b) or subject to the effective date limitation of 5 U.S.C. 533(d).

* * * * *

Drafting Information

The principal author of this document is Steven C. Simon of the FAA, Wine and Beer Branch, Bureau of Alcohol, Tobacco and Firearms.

List of Subjects

27 CFR Part 4

Advertising, Consumer protection, Customs duties and inspection, Imports, Labeling, Packaging and containers, Wine.

27 CFR Part 5

Advertising, Consumer protection, Customs duties and inspection, Imports, Labeling, Liquors, Packaging and containers.

27 CFR Part 7

Advertising, Beer, Consumer protection, Customs duties and inspection, Imports, Labeling.

27 CFR Part 19

Administrative practice and procedure, Alcohol and alcoholic beverages, Authority delegations, Claims, Chemicals, Customs duties and inspection, Electronic fund transfers, Excise taxes, Exports, Gasohol, Imports, Labeling, Liquors, Packaging and containers, Reporting and recordkeeping requirements, Research, Spices and flavorings, Surety bonds, Security measures, Stills, Transportation, U.S. possessions, Vinegar, Warehouses, Wine.

27 CFR Part 240

Administrative practice and procedure, Authority delegations, Claims, Electronic fund transfers, Excise taxes, Exports, Food additives, Fruit juices, Labeling, Liquors, Packaging and containers, Reporting and recordkeeping requirements, Research, Scientific equipment, Spices and flavorings, Surety bonds, Transportation, Vinegar, Warehouses, Wine.

27 CFR Part 250

Administrative practice and procedure, Alcohol and alcoholic beverages, Authority delegations, Beer, Customs duties and inspection, Electronic fund transfers, Excise taxes, Liquors, Packaging and containers, Reporting and recordkeeping requirements, Surety bonds, Transportation, U.S. possessions, Warehouses, Wine.

27 CFR Part 251

Administrative practice and procedure, Alcohol and alcoholic beverages, Authority delegations, Beer, Customs duties and inspection, Excise taxes, Imports, Labeling, Liquors, Packaging and containers, Perfume, Reporting and recordkeeping requirements, Transportation, Wine.

Issuance

Accordingly, Parts 4, 5, 7, 19, 240, 250 and 251 of Title 27 of the Code of Federal Regulations are amended as follows:

PART 4—LABELING AND ADVERTISING OF WINE

Paragraph 1. The authority citation for Part 4 continues to read as follows:

Authority: 27 U.S.C. 205.

Par. 2. Section 4.40 is amended by replacing the words "Form 1649," wherever they appear, with the words "ATF Form 5100.31."

Par. 3. Paragraph (a) of § 4.50 is amended by replacing the words "Form 1649" with the words "ATF Form 5100.31."

Par. 4. Paragraph (b) of § 4.50 is amended by replacing the second sentence with the following: "Application for exemption shall be made on ATF Form 5100.31 in accordance with instructions on the form. If the application is approved, a certificate of exemption will be issued on the same form."

PART 5—LABELING AND ADVERTISING OF DISTILLED SPIRITS

Par. 5. The authority citation for Part 5 continues to read as follows:

Authority: 26 U.S.C. 5301, 7805; 27 U.S.C. 205.

Par. 6. Paragraphs (a) and (b) of § 5.51 are amended by replacing the words "Form 1649," wherever they appear, with the words "ATF Form 5100.31."

Par. 7. Paragraph (d) of § 5.51 is amended by replacing the words "Forms 1649" with the words "ATF Forms 5100.31."

Par. 8. Paragraph (a) of § 5.55 is amended by replacing the words "Form 1649" with the words "ATF Form 5100.31."

Par. 9. Paragraph (b) of § 5.55 is amended by replacing the words "Form 1650" with the words "ATF Form 5100.31," and by replacing the words "Form 1648" with the words "that form."

PART 7—LABELING AND ADVERTISING OF MALT BEVERAGES

Par. 10. The authority citation for Part 7 continues to read as follows:

Authority: 27 U.S.C. 205.

Par. 11. Section 7.31 is amended by replacing the words "Form 1649," wherever they appear, with the words "ATF Form 5100.31."

Par. 12. Section 7.41 is amended by replacing the words "Form 1649," wherever they appear, with the words "ATF Form 5100.31."

PART 19—DISTILLED SPIRITS PLANTS

Par. 13. The authority citation for Part 19 continues to read as follows:

Authority: 26 U.S.C. 5001, 5002, 5004-5006, 5008, 5041, 5061, 5062, 5066, 5101, 5111-5113, 5171-5173, 5175, 5176, 5178-5181, 5201-5207, 5211-5215, 5221-5223, 5231, 5232, 5235, 5236, 5241-5243, 5271, 5273, 5301, 5311-5313, 5362, 5370, 5373, 5501-5505, 5551-5555, 5559, 5561, 5562, 5601, 5612, 5682, 6001, 6065, 6109, 6302, 6311, 6676, 7510, 7805; 31 U.S.C. 9301, 9303, 9304, 9306.

Par. 14. Section 19.633 is amended by replacing the words "Form 1649/.5100.31," wherever they appear, with the words "ATF Form 5100.31"; and by replacing the words "Forms 1649/5100.31" in paragraph (b) with the words "ATF Forms 5100.31."

PART 240—WINE

Par. 15. The authority citation for Part 240 is revised to read as follows:

Authority: 26 U.S.C. 5001, 5008, 5041, 5042, 5044, 5061, 5062, 5111-5113, 5121, 5122, 5142, 5143, 5173, 5206, 5214, 5215, 5332, 5351, 5353, 5354, 5356-5358, 5361, 5362, 5364-5373, 5381-5388, 5391, 5392, 5551, 5552, 5661, 5662, 5684, 6065, 6091, 6109, 6301, 6302, 6311, 6651, 6676, 7011, 7302, 7342, 7502, 7503, 7606, 7805, 7851; 31 U.S.C. 9301, 9303, 9304, 9306.

Par. 16. Section 240.580 is amended by removing the words "Form 1649" and the comma following them, and by replacing the words "Form 1650" with the words "ATF Form 5100.31."

PART 250—LIQUORS AND ARTICLES FROM PUERTO RICO AND THE VIRGIN ISLANDS

Par. 17. The authority citation for Part 250 is revised to read as follows:

Authority: 26 U.S.C. 5001, 5007, 5008, 5041, 5051, 5061, 5111, 5112, 5114, 5121, 5122, 5124, 5146, 5205, 5207, 5232, 5301, 5314, 5555, 6001, 6301, 6302, 6804, 7101, 7102, 7651, 7652, 7805; 31 U.S.C. 9301, 9303, 9304, 9306.

Par. 18. Section 250.314 is amended by replacing the words "Form 1649/5100.31," wherever they appear, with the words "ATF Form 5100.31"; and by replacing the words "Forms 1649/5100.31," wherever they appear, with the words "ATF Forms 5100.31."

PART 251—IMPORTATION OF DISTILLED SPIRITS, WINE, AND BEER

Par. 19. The authority citation for Part 251 is revised to read as follows:

Authority: 26 U.S.C. 5001, 5041, 5051, 5054, 5061, 5111, 5112, 5114, 5121, 5122, 5124, 5201, 5205, 5207, 5232, 5273, 5301, 5313, 5365, 5555, 5662, 6302, 7805.

Par. 20. Section 251.58 is amended by replacing the words "(Form 1649)," in the first sentence, with the words "on ATF Form 5100.31"; by removing the words "(Form 1649)" from the second sentence; and by replacing the words "(Form 1650)," in the second sentence, with the words "on ATF Form 5100.31."

Par. 21. The second sentence of § 251.59 is amended by removing the words "(Form 1649)," and by replacing the words "(Form 1650)" with the words "on ATF Form 5100.31."

Par. 22. Section 251.204 is amended by replacing the words "Form 1649/5100.31," wherever they appear, with the words "ATF Form 5100.31"; and by replacing the words "Forms 1649/5100.31," wherever they appear, with the words "ATF Forms 5100.31."

Signed: September 16, 1986.

W.T. Drake,
Acting Director.

Approved: October 14, 1986.

Michael H. Lane,
Acting Assistant Secretary (Enforcement).

(Filed by the Office of the Federal Register on October 28, 1986, 8:45 am and published in the Federal Register for October 29, 1986, 51 F.R. 39524)

Subpart B — TOBACCO

TITLE 27—ALCOHOL, TOBACCO PRODUCTS AND FIREARMS—CHAPTER I—BUREAU OF ALCOHOL, TOBACCO AND FIREARMS, DEPARTMENT OF THE TREASURY

Implementing the Consolidated Omnibus Budget Reconciliation Act of 1985 (Public Law 99-272)

TD ATF-243

27 CFR Parts 270, 275, 290, 295, and 296

AGENCY: Bureau of Alcohol, Tobacco and Firearms (ATF), Treasury.

ACTION: Final rule (Treasury decision).

SUMMARY: This final rule implements Title XIII, Subtitle B of the Consolidated Ominbus Budget Reconciliation Act of 1985 (Pub. L. 99-272, 100 Stat. 311).

This document amends temporary regulations (T.D. ATF-232, 51 FR 28078) in 27 CFR Parts 270, 275, 290, 295, and 296 which provided for the taxation and regulation of chewing tobacco and snuff pursuant to Pub. L. 99-272. In addition, detailed rules for the grandfathering of existing manufacturers of chewing tobacco and snuff into the current regulatory framework for other tobacco products were provided.

EFFECTIVE DATE: December 31, 1986.

FOR FURTHER INFORMATION CONTACT: Nancy Cook or Clifford A. Mullen, Distilled Spirits and Tobacco Branch, Bureau of Alcohol, Tobacco and Firearms, Room 6235, Ariel Rios Federal Building, 1200 Pennsylvania Avenue NW., Washington, DC 20226 (202) 566-7531.

SUPPLEMENTARY INFORMATION: This document contains final regulations implementing and smokeless tobacco provisions of the Consolidated Ominbus Budget Reconciliation Act of 1985 (Pub. L. 99-272). The final regulations provided by this document supersede the temporary rule on the subject which was published in the **Federal Register** on August 5, 1986 (51 FR 28078). A notice of proposed rulemaking cross referenced to the temporary rule was also published in the **Federal Register** on August 5, 1986 (51 FR 28106) and comments were received under the notice.

Temporary Rule Comments

Comments from four correspondents were received concerning the temporary rule. The comments were directed to three specific areas of the regulations—notice of tax classification of smokeless tobacco on packages, weight of the products on packages, and procedures for destruction of the products at the factory or for destruction of the products withdrawn from the market.

Notice of Tax Classification on Packages—27 CFR 270.216

One Commenter petitioned for final regulations which would allow smokeless tobacco products to be designated other than as "chewing tobacco" or "snuff" to avoid confusion to his customers. These customers selectively purchase smokeless tobacco products based on "cut," e.g., "long cut," "rough cut," "western cut," etc.

Other commenters requested that the final regulations provide for the use of geometric symbols in lieu of the designation "chewing tobacco" or "snuff" as proposed in the notice for smokeless tobacco. The commenters expressed the view that the designation "chewing tobacco" or "snuff" would cause confusion to customers, interfere with existing marketing plans, and pose an obstacle to the development of new products.

Weight of Product on Package—27 CFR 270.216

All commenters requested that the final rule not require the package weight to be marked on the consumer packages of either "plug," "twist," or "portion packaged" smokeless tobacco because of the lack of uniformity in the packaged weight of those products. ("Portion packed" products are those smokeless tobacco products such as snuff which are packaged in small, tea-bag-like, porous, in-mouth pouches.) As an alternative those commenters requested that shipping cases for those products be marked with the weight or average net weight of the contents. One commenter requested that cases for all smokeless tobacco products be marked with the actual weight of the product contained therein.

Procedures for Destruction of Products—27 CFR 270.253 or Withdrawal of Tobacco Products from the Market—27 CFR 270.311

One commenter requested separate procedures specific to smokeless tobacco manufacturers for the destruction of smokeless tobacco products entered into the factory record as manufactured or received, without salvaging the tobacco, and destruction of tobacco products withdrawn from the market. The commenter expressed the view that the procedures required for all tobacco products manufacturers would be unduly burdensome for smokeless tobacco manufacturers because of the relatively small volume of product withdrawn from the market by smokeless tobacco manufacturers. The special procedures requested for smokeless tobacco manufacturers would be based on an oral approval by ATF after oral notification by the manufacturer of the intended destruction. The oral request for destruction before removal from the factory, (27 CFR 270.253), would be supported by manufacturer's credit memoranda. In the case of a product withdrawn from the market, (27 CFR 270.311), the oral notification would be supported by the manufacturer's credit memorandum and ATF Form 3069 (5200.7), Schedule Of Tobacco Products, Cigarette Papers Or Tubes Withdrawn From the Market.

Analysis of Comments

On July 1, 1986, smokeless tobacco manufacturers began operating under the temporary rule. In the subsequent months the actual experience of the Bureau of Alcohol, Tobacco and Firearms (ATF) confirms industry statements that a change to the regulations is necessary with respect to package markings in order to prevent unnecessary burdens on the industry.

The temporary rule, 27 CFR 270.216, Notice for smokeless tobacco, requires every package of chewing tobacco or snuff, before removal, subject to tax, to have thereon the designation "chewing tobacco" or "snuff" and a statement of the actual pounds and ounces of the product contained therein. The comments received by ATF indicate that by established industry practice, manufacturers often label and market their products using such terms as "smokeless tobacco" or "fine cut tobacco" rather than "chewing tobacco" or "snuff." The commenters asserted that a requirement that products be designated as "chewing tobacco" or “snuff” might cause confusion to consumers, and disrupt the sales and marketing plans of smokeless tobacco manufacturers.

The purpose of the required notice for smokeless tobacco is to protect the revenue. ATF's jurisdiction does not extend to the regulation of the labeling of smokeless tobacco products for purposes of consumer protection. It is necessary for the protection of the revenue and for the purpose of effective tax administration, that all packages of smokeless tobacco products bear a designation of the tax classification. However, ATF has determined that the use of alternative markings on packages of smokeless tobacco products, which clearly designate the tax classification of the product therein, would provide the same protection and security to the revenue without hindering effective tax administration.

Accordingly, ATF has determined that, without jeopardy to the revenue of relinquishing necessary administrative control 27 CFR 270.216 will be amended to provide for alternative markings to the designations “chewing tobacco” or “snuff” to be shown on the packages of smokeless tobacco products. However, geometric figures would not serve well as tax class designations because they might be difficult to distinguish from other decorative package features, unless elaborate and burdensome particulars as to their location, size, and color were specified in the regulations. As an alternative, packages of chewing tobacco may be designated “Tax Class C,” and packages of snuff may be designated “Tax Class M.” The regulations in 27 CFR 275.72 and 295.43 will be similarly amended.

ATF has also determined, from the comments received, that because of manufacturing and packaging methods, certain products such as “twist”, “plug”, and “portion packed” smokeless tobacco are subject to unavoidable variation in individual package weights. Therefore, for these products, it would be impractical and unreasonable to require that each package bear a statement of the actual pounds and ounces contained therein. However, the comments indicate that there is no such difficulty in determining the total weight of large quantities of these products, when the products are placed in shipping cases.

Accordingly, ATF has determined that, without jeopardy to the revenue or relinquishing necessary administrative control, 27 CFR 270.216 will be amended to provide for alternative marking of the product weight of packages of smokeless tobacco. As amended, the regulation will provide that smokeless tobacco manufacturers may, instead of marking the product weight on each package, have the total weight of the product, and the number and tax class of packages of product contained therein, marked on the shipping cases containing tobacco products. The regulations in 27 CFR 275.272 and 295.43 will be similarly amended.

With respect to procedures for destruction of products at the factory, 27 CFR 270.253, or for destruction of products withdrawn from the market, 27 CFR 270.311, ATF has determined that the current regulations are not unduly burdensome to smokeless tobacco manufacturers. However, such manufacturers may request approval for alternative methods or procedures under existing regulations in 27 CFR 270.45. ATF has determined to reexamine the destruction procedures with a view to bringing the requirements for all tobacco products into conformity with those for the other commodities regulated by ATF. Accordingly, ATF will include destruction procedures among the topics covered in a forthcoming notice of proposed rulemaking applicable to all tobacco products.

Temporary Regulations Adopted As Final Regulations Without Change

Temporary regulations were promulgated as T.D. ATF–232 (51 FR 28078) as a result of changes necessary to implement the smokeless tobacco provisions of the Consolidated Omnibus Budget Reconciliation Act of 1985. These regulations are hereby adopted as final regulations with no change, except as amended herein. The following is a list of sections in the temporary regulations which are adopted as final regulations with no change.

Part 270

The heading, table of contents, §§ 270.1, 270.11, 270.25, 270.26, 270.27, 270.41, 270.42, 270.44, 270.61, 270.61a, 270.69, 270.72, 270.104, 270.133, 270.161, 270.162, 270.165a, 270.166, 270.167, 270.168, 270.182, 270.183, 270.184, 270.186, 270.201, 270.202, 270.211, 270.212, 270.216a, 270.217, 270.231, 270.232, 270.233, 270.234, 270.235, 270.236, 270.251, 270.252, 270.253, 270.254, 270.255, 270.281, 270.282, 270.283, 270.284, 270.286, 270.287, 270.301, 270.311, 270.312, 270.331.

Part 275

The table of contents, §§ 275.1, 275.11, 275.21, 275.23, 275.25, 275.33, 275.40, 275.41, 275.50, 275.60, 275.62, 275.63, 275.71, 275.72a, 275.75, 275.81, 275.85, 275.85a, 275.86, 275.101, 275.105, 275.106, 275.107, 275.109, 275.110, 275.111, 275.112, 275.115a, 275.116, 275.117, 275.120, 275.121, 275.125, 275.135, 275.136, 275.137, 275.138, 275.139, 275.140, 275.141, 275.161, 275.162, 275.163, 275.165, 275.170, 275.171, 275.172, 275.173, 275.174.

Part 290

The heading, the table of contents, §§ 290.1, 290.2, 290.11, 290.61, 290.61a, 290.62, 290.63, 290.64, 290.65, 290.66, 290.67, 290.69, 290.70, 290.90, 290.112, 290.123, 290.142, 290.143, 290.147, 290.152, 290.153, 290.154, 290.181, 290.182, 290.183, 290.184, 290.185, 290.187, 290.188, 290.189, 290.190, 290.191, 290.192, 290.193, 290.194, 290.195, 290.196, 290.196a, 290.197, 290.198, 290.200, 290.201, 290.202, 290.203, 290.204, 290.205, 290.206, 290.207, 290.207a, 290.208, 290.210, 290.212, 290.213, 290.221, 290.222, 290.223, 290.224, 290.225, 290.226, 290.227, 290.228, 290.229, 290.230, 290.255, 290.264.

Part 295

The heading, the table of contents, §§ 295.1, 295.11, 295.23, 295.25, 295.31, 295.32, 295.33, 295.34, 295.35, 295.36, 295.37, 295.41, 295.42, 295.46, 295.51.

Part 296

The heading, the table of contents, §§ 296.71, 296.72, 296.73, 296.74, 296.75, 296.76, 296.77, 296.78, 296.79, 296.80, 296.161, 296.163, 296.164, 296.166, 296.167.

* * * * *

List of Subjects

27 CFR Part 270

Administrative practice and procedure, Authority delegations, Claims, Electronic fund transfer, excise taxes, Labeling, Packaging and containers, Penalties, Reporting requirements, Seizures and forfeitures, Surety bonds, Tobacco products.

27 CFR Part 275

Administrative practice and procedure, Authority delegations, Cigarette papers and tubes, Electronic fund transfer, Claims, Customs duties and inspection, Excise taxes, Imports, Labeling, Packaging and containers, Penalties, Reporting requirements, Seizures and forfeitures, Surety bonds, Tobacco products, U.S. possessions, Warehouses.

27 CFR Part 290

Administrative practice and procedure, Aircraft Authority delegations, Cigarette papers and tubes, Claims, Customs duties and inspection, Excise taxes, Exports, Foreign-trade zones, Labeling, Packaging and containers, Penalties, Surety bonds Tobacco products, Vessels, Warehouses.

27 CFR Part 295

Administrative practice and procedure, Authority delegations, Cigarette papers and tubes, Excise taxes, Labeling, Packaging and containers, Tobacco products.

27 CFR Part 296

Authority delegations, Cigarette papers and tubes, Claims, Disaster assistance, Excise taxes, Penalties, Seizures and forfeitures, Surety bonds, Tobacco products.

Drafting Information

The principal authors of this document are Nancy F. Cook and Clifford A. Mullen of the Distilled Spirits and Tobacco Branch, Bureau of Alcohol, Tobacco and Firearms.

Authority and Issuance

PARTS 270, 275, 290, 295 AND 296—[AMENDED]

Accordingly, the temporary regulation amending 27 CFR Parts 270, 275, 290, 295 and 296 which was published at 51 FR 28078-28092 is adopted as a final rule with the following changes:

Sec. A. The temporary regulations in 27 CFR Part 270 are amended as follows:

Paragraph 1. The authority citation for Part 270 continues to read as follows:

Authority: 5 U.S.C. 552(a), 26 U.S.C. 5701, 5703, 5704, 5705, 5711, 5712, 5713, 5721, 5722, 5723, 5741, 5751, 5753, 5761, 5762, 5763, 6109, 6301, 6302, 6311, 6313, 6402, 6404, 6423, 6676, 7212, 7325, 7342, 7502, 7503, 7606, 7805, 31 U.S.C. 9301, 9303, 9304, 9306.

Par. 2. Section 270.216 is revised to read as follows:

§ 270.216 Notice for smokeless tobacco.

(a) *Product designation.* Every package of chewing tobacco or snuff shall, before removal subject to tax, have adequately imprinted thereon, or on a label securely affixed thereto, the designation "chewing tobacco" or "snuff." As an alternative, packages of chewing tobacco may be designated "Tax Class C", and packages of snuff may be designated "Tax Class M".

(b) *Product weight.* Every package of chewing tobacco or snuff shall, before removal subject to tax, have adequately imprinted thereon, or on a label securely affixed thereto, a clear statement of the actual pounds and ounces of the product contained therein. As an alternative, the shipping cases containing packages of chewing tobacco or snuff may, before removal, have adequately imprinted thereon, or on a label securely affixed thereto, a clear statement, in pounds and ounces, of the total weight of the product, the tax class of the product, and the total number of the packages of product contained therein.

(Approved by the Office of Management and Budget under control number 1512-0488)

(Sec. 202. Pub. L. 85-859, 72 Stat. 1422 (26 U.S.C. 5723))

Sec. B. The temporary regulations in 27 CFR Part 275 are amended as follows:

Paragraph 1. The authority citation for Part 275 continues to read as follows:

Authority: 5 U.S.C. 552(a), 26 U.S.C. 5701, 5703, 5704, 5705, 5708, 5722, 5723, 5741, 5761, 5762, 5763, 6301, 6302, 6313, 6404, 7101, 7212, 7342, 7606, 7652, 7652(a), 7805, 31 U.S.C. 9301, 9303, 9304, 9306.

Par. 2. Section 275.72 is revised to read as follows:

§ 275.72 Notice for smokeless tobacco.

(a) *Product designation.* Every package of chewing tobacco or snuff shall, before removal subject to internal revenue tax, have adequately imprinted thereon, or on a label securely affixed thereto, the designation "chewing tobacco" or "snuff." As an alternative, packages of chewing tobacco may be designated "Tax Class C," and packages of snuff may be designated "Tax Class M."

(b) *Product weight.* Every package of chewing tobacco or snuff shall, before removal subject to internal revenue tax, have adequately imprinted thereon, or on a label securely affixed thereto, a clear statement of the actual pounds and ounces of the product contained therein. As an alternative, the shipping cases containing packages of chewing tobacco or snuff may, before removal, have adequately imprinted thereon, or on a label securely affixed thereto, a clear statement, in pounds and ounces, of the total weight of the product, the tax class of the product, and the total number of the packages of product contained therein.

(Approved by the Office of Management and Budget under control number 1512-0488)

(Sec. 202. Pub. L. 85-859, 72 Stat. 1422 (26 U.S.C. 5723))

PART 295—[AMENDED]

Sec. C. The temporary regulations in 27 CFR Part 295 are amended as follows:

Paragraph 1. The authority citation for Part 295 continues to read as follows:

Authority: 26 U.S.C. 5703, 5704, 5705, 5723, 5741, 5751, 5762, 5763, 6313, 7212, 7342, 7606, 7805, 44 U.S.C. 3504(h).

Par. 2. Section 295.43 is revised to read as follows:

§ 295.43 Notice for smokeless tobacco.

(a) *Product designation.* Every package of chewing tobacco or snuff shall, before removal under this part, have adequately imprinted thereon, or on a label securely affixed thereto, the designation "chewing tobacco" or "snuff." As an alternative, packages of chewing tobacco may be designated "Tax Class C," and packages of snuff may be designated "Tax Class M."

(b) *Product weight.* Every package of chewing tobacco or snuff shall, before removal under this part, have adequately imprinted thereon, or on a label securely affixed thereto, a clear statement of the actual pounds and ounces of the product contained therein. As an alternative, the shipping cases containing packages of chewing tobacco or snuff may, before removal, have adequately imprinted thereon, or on a label securely affixed thereto, a clear statement, in pounds and ounces, of the total weight of the product, the tax class of the product, and the total number of the packages of product contained therein.

(Approved by the Office of Management and Budget under control number 1512-0488)

(Sec. 202, Pub. L. 85-859. 72 Stat. 1422 (26 U.S.C. 5723))

Signed: November 7, 1986.

Stephen E. Higgins,
Director.

Approved: November 24, 1986.

Francis A. Keating, II,
Assistant Secretary (Enforcement).

(Filed by the Office of the Federal Register on November 28, 1986, 8:45 am and published in the Federal Register for December 1, 1986, 51 F.R. 43191)

Subpart C — FIREARMS

TITLE 27–ALCOHOL, TOBACCO PRODUCTS AND FIREARMS–CHAPTER I–BUREAU OF ALCOHOL, TOBACCO AND FIREARMS, DEPARTMENT OF THE TREASURY

Commerce in Firearms and Ammunition; Temporary Rule

TD ATF-241

27 CFR Parts 72, 178, and 179

AGENCY: Bureau of Alcohol, Tobacco and Firearms (ATF), Department of the Treasury.

ACTION: Temporary rule (Treasury decision).

SUMMARY: This temporary rule amends regulations in 27 CFR Parts 72, 178 and 179, relating to firearms, to implement provisions of Public Law 99–308 (100 Stat. 449), approved May 19, 1986, and a subsequent amendment thereto, Public Law 99–360 (100 Stat. 766), approved July 8, 1986. These regulations implement the law to delete licensing requirements and recordkeeping for ammunition transactions and implement the law restricting distribution of machine guns. In the Proposed Rules portion of this **Federal Register,** ATF is issuing a notice of proposed rulemaking inviting comments on the temporary rule for a 90-day period after the publication date of this temporary rule.

DATES: The temporary regulations are effective on November 15, 1986, except for §§ 178.36 and 179.105 relating to machine guns which were effective May 19, 1986.

ADDRESS: Send written comments to: Chief, Firearms and Explosives Operations Branch, Bureau of Alcohol, Tobacco and Firearms, P.O. Box 189, Washington, DC 20044–0189.

FOR FURTHER INFORMATION CONTACT: Daniel E. Crowley, ATF Specialist, Firearms and Explosives Operations Branch, Bureau of Alcohol, Tobacco and Firearms, Ariel Rios Federal Building, 1200 Pennsylvania Avenue, NW, Washington, DC 20226; (202) 566-7591.

SUPPLEMENTARY INFORMATION: This temporary rule implements provisions of Pub. L. 99–308 and Pub. L. 99–360, which amend several provisions of the Gun Control Act of 1968, chapter 44 (relating to firearms) of title 18, United States Code. Numerous changes have been made in 27 CFR Parts 72, 178 and 179 to implement the statutory changes. Some of the new statutory provisions which necessitated regulation changes are:

(1) Nonlicensees may acquire rifles and shotguns, but not handguns, from Federal firearms licensees outside their State of residence if the sale complies with State and local laws applicable at the place of sale and where the purchaser resides. The interstate shipment or delivery of firearms to nonlicensees is still prohibited.

(2) The licensing requirement for those dealing in ammunition only is eliminated. Ammunition recordkeeping requirements for a firearms licensee are eliminated except for recording the name, age and place of residence of an armor-piercing ammunition purchaser and a description of the ammunition. Licenses are required of manufacturers and importers of ammunition.

(3) For licensing and other purposes under the Gun Control Act, the term "engaged in the business" is now defined as those who regularly deal in firearms with the "principal objective of livelihood and profit" through the "repetitive purchase and resale of firearms."

(4) There is specific statutory authority allowing licensees to deal in firearms at gun shows located in the State in which their licensed premises are located.

(5) Licensed manufacturers, licensed importers and licensed dealers need only maintain a "bound book" record of disposition of "personal firearms" where the firearm has been kept in the licensee's personal collection for one year after its transfer from the business inventory or otherwise acquired. The requirement for licensees to obtain an ATF Form 4473 covering such sales is eliminated. The sale is otherwise subject only to the requirements imposed on unlicensed persons selling firearms.

(6) Licensed collectors need only maintain a "bound book" record of firearms transactions and the requirement for licensed collectors to obtain an ATF Form 4473 is eliminated.

(7) An inspection warrant is now required to inspect the records and inventory of licensed manufacturers, licensed importers and licensed dealers except for a criminal investigation of a person other than the licensee, one annual inspection, or in firearms tracing. An inspection warrant is now required to inspect the records and collection of curio or relic firearms of licensed collectors except for one annual inspection or in firearms tracing.

(8) All persons, whether licensed or not, are prohibited from selling or delivering firearms to those persons specificially prohibited from shipping, transporting, receiving or possessing firearms.

(9) Relief from Federal firearms disabilities may be applied for by any proscribed person and the bar to relief is removed for felons whose crimes involved the use of a firearm or other weapon, or whose conviction was for a violation of the Gun Control Act or the National Firearms Act.

(10) Effective May 19, 1986, the possession or transfer of a machine gun is prohibited except for (a) a transfer to or by, or possession by or under the authority of, Government entities, or (b) any lawful transfer or lawful possession of a machine gun lawfully possessed before May 19, 1986.

(11) Revised and streamlined license revocation procedures are provided for in view of *de novo* review of the agency action by the United States district courts.

* * * * *

Drafting Information

The principal author of this document is Daniel E. Crowley, ATF Specialist, Firearms and Explosives Operations Branch, Bureau of Alcohol, Tobacco and Firearms.

Administrative Procedure Act

Because most of the provisions of Pub. L. 99–308 and Pub. L. 99–360 become effective on November 15, 1986, and some provisions relating to machine guns became effective on May 19, 1986, and require immediate implementation and compliance by licensees and the public, it is hereby found to be impractical and unnecessary to issue this Treasury decision with notice and public procedure thereon under 5 U.S.C. 553(b) or subject to the effective date limitation of 5 U.S.C. 553(d).

List of Subjects

27 CFR Part 72

Administrative practice and procedure, Authority delegation, Seizures and forfeitures, Surety bonds.

27 CFR Part 178

Administrative practice and procedure, Arms and munitions, Authority delegation, Customs duties and inspection, Exports, Imports, Military personnel, Penalties, Reporting requirements, Research, Seizures and forfeitures, Transportation.

27 CFR Part 179

Administrative practice and procedure, Arms and munitions, Authority delegation, Customs duties and inspection, Exports, Imports, Military personnel, Penalties, Reporting requirements, Research, Seizures and forfeitures, Transportation.

Authority and Issuance

Accordingly, ATF is issuing a temporary rule to amend Title 27 of the Code of Federal Regulations and, by a notice of proposed rulemaking published in this **Federal Register,** is requesting comments by January 27, 1987.

PART 72—[AMENDED]

Paragraph 1. The authority citation for Part 72 continues to read as follows:

Authority: Sec. 8, 53 Stat. 1293, sec. 1, 62 Stat. 761, as amended, sec. 7805, 68A Stat. 917, sec. 921, 82 Stat. 1214; 49 U.S.C. App. 788, 18 U.S.C. 1261, 26 U.S.C. 7805, 18 U.S.C. 926, unless otherwise noted.

Par. 2. The table of contents to 27 CFR Part 72 is amended to revise the heading of Subpart F and to add a new § 72.69 to read as follows:

Sec.

* * * * *

Subpart F—Administrative Sale or Disposition of Personal Property

* * * * *

§ 72.69 Alternate disposition of seized carriers.

* * * * *

Par. 3. Section 72.21 is revised to designate the existing section as paragraph (a) and to add new paragraphs (b) and (c) concerning the commencement of forfeiture proceedings with respect to seized firearms and ammunition. As revised, § 72.21 reads as follows:

§ 72.21 Personal property and carriers subject to seizure.

(a) Personal property may be seized by duly authorized ATF officers for forfeiture to the United States when involved, used, or intended to be used, in violation of the laws of the United States which ATF officers are empowered to enforce, including Title 18 U.S.C. Chapters 40 (explosives), 44 (firearms), 59 (liquor traffic), 114 (contraband cigarettes), 229 (liquor); Title 26 U.S.C. Chapter 51 (distilled spirits), 52 (tobacco), 53 (firearms); and Title 27 U.S.C. 206 (liquor). Carriers, as defined in § 72.11, similarly may be seized when used in violation of Title 49 U.S.C. App., Chapter 11 (transportation) et cetera of contraband firearms or contraband cigarettes.

(b) Any action or proceeding for the forfeiture of firearms or ammunition seized under 18 U.S.C. Chapter 44 shall be commenced within 120 days of such seizure.

(c) Upon acquittal of the owner or possessor, or the dismissal of the criminal charges against such person other than upon motion of the Government prior to trial, firearms or ammunition seized under 18 U.S.C. Chapter 44 shall be returned forthwith to the owner or possessor or to a person delegated by the owner or possessor unless the return of the firearms or ammunition would place the owner or possessor or his delegate in violation of law.

Par. 4. Section 72.22 is revised to change "$10,000.00" to "$100,000.00" in paragraphs (a)(1), (4), (5) and (b), and paragraph (a)(6) is amended to change the amount of the cost bond for seized property. As revised, § 72.22(a)(6) reads as follows:

§ 72.22 Forfeiture of seized personal property and carriers.

(a) *Administrative forfeiture.* * * *

(6) Any person claiming the personal property or carrier so seized, within the time specified in the notice, may file with the Director a claim stating the interest in the articles or carrier seized, and may execute a bond to the United States, conditioned that, in case of condemnation of the article or carrier so seized, the obligators shall pay all the costs and expenses of the proceedings to obtain such condemnation. The amount of the cost bond is $250.00, unless the seized property is a vehicle, vessel, or aircraft seized for a violation of 49 U.S.C. App., Chapter 11, in which case the cost bond shall be in the amount of $2,500 or ten percent of the value of the claimed property, whichever is lower, but not less than $250.00 Both the claim and the cost bond shall be executed in quadruplicate.

* * * * *

Par. 5. The centerhead for Subpart F is revised and § 72.61 is amended by designating the existing section as paragraph (a), by adding a heading for new paragraph (a), and by adding a new paragraph (b), to read as follows:

Subpart F—Administrative Sale or Disposition of Personal Property

§ 72.61 Alternative methods of sale.

(a) *Sale by auction or competitive bid.* When personal property or a carrier * * *

(b) *Sale by General Services Administration.* When a vessel, vehicle, or aircraft seized under 49 U.S.C. App., Chapter 11 is forfeited administratively, the Director may authorize the General Services Administration to conduct the sale pursuant to such conditions as the Director deems proper.

Par. 6. Section 72.69 is added to Subpart F to provide for an alternate disposition of seized carriers. New § 72.69 reads as follows:

§ 72.69 Alternative disposition of seized carriers.

(a) *State or local proceedings.* The Director may discontinue forfeiture proceedings instituted under the Customs laws for seizures of carriers under 49 U.S.C. App, Chapter 11 in favor of the institution of forfeiture proceedings by State or local authorities under an appropriate State or local statute. If such forfeiture proceedings are discontinued or dismissed, the Director may transfer the seized property to the appropriate State or local official, and notice of discontinuance or dismissal shall be provided to all known interested parties.

(b) *Transfer to State or local law enforcement agency.* Any carrier forfeited under the Customs laws for seizures under 49 U.S.C. App., Chapter 11 may be transferred by the Director to any State or local law enforcement agency which participated directly in the seizure or forfeiture of the property. (19 U.S.C. 1616)

PART 178—[AMENDED]

Par. 7. The authority citation for Part 178 is revised to read as follows:

Authority: 18 U.S.C. 926.

Par. 8. The headings to many sections in 27 CFR Part 178 have changed. Therefore, the table of contents to 27 CFR Part 178 is revised to read as follows:

PART 178—COMMERCE IN FIREARMS AND AMMUNITION

Subpart A—Introduction

Sec.

178.1 Scope of regulations.
178.2 Relation to other provisions of law.

Subpart B—Definitions

178.11 Meaning of terms.

Subpart C—Administrative and Miscellaneous Provisions

178.21 Forms prescribed.
178.22 Alternate methods or procedures; emergency variations from requirements.
178.23 Right of entry and examination.
178.24 List of State laws and published ordinances.
178.25 Disclosure of information.
178.26 Curio and relic determination.
178.27 Destructive device determination.
178.28 Transportation of destructive devices and certain firearms.
178.29 Out-of-State acquisiton of firearms by nonlicenses.
178.30 Out-of-State disposition of firearms by nonlicenses.
178.31 Delivery by common or contract carrier.
178.32 Prohibited shipment, transportation, possession, or receipt of firearms and ammunition by certain persons.
178.33 Stolen firearms and ammunition.
178.34 Removed, obliterated, or altered serial number.
178.35 Skeet, trap, target, and similar shooting activities.
178.36 Transfer or possession of machine guns.

Subpart D—Licenses

178.41 General.
178.42 License fees.
178.43 License fee not refundable.
178.44 Original license.
178.45 Renewal of license.
178.46 Insufficient fee.
178.47 Issuance of license.
178.48 Correction of error on license.
178.49 Duration of license.
178.50 Locations covered by license.
178.51 License not transferable.
178.52 Change of address.
178.53 Change in trade name.
178.54 Change of control.
178.55 Continuing partnerships.
178.56 Right of succession by certain persons.
178.57 Discontinuance of business.
178.58 State or other law.
178.59 Abandoned application.
178.60 Certain continuances of business.

Subpart E—License Proceedings

178.71 Denial of an application for license.
178.72 Hearing after application denial.
178.73 Notice of revocation.
178.74 Request for hearing after notice of revocation.
178.75 Service on applicant or licensee.
178.76 Representation at a hearing.
178.77 Designated place of hearing.
178.78 Operations by licensees after notice.

Subpart F—Conduct of Business

178.91 Posting of license.
178.92 Identification of firearms.
178.93 Authorized operations by a licensed collector.
178.94 Sales or deliveries between licensees.
178.95 Certified copy of license.
178.96 Out-of-State and mail order sales.
178.97 Loan or rental of firearms.
178.98 Sales or deliveries of destructive devices and certain firearms.
178.99 Certain prohibited sales or deliveries.
178.100 Conduct of business away from licensed premises.
178.101 Record of transactions.

Subpart G — Importation

178.111 General.
178.112 Importation by a licensed importer.
178.113 Importation by other licensees.
178.114 Importation by members of the U.S. Armed Forces.
178.115 Exempt importation.
178.116 Conditional importation.
178.117 Function outside a customs territory.
178.118 Importation of certain firearms classified as curios and relics.

Subpart H — Records

178.21 General.
178.122 Records maintained by importers.
178.123 Records maintained by manufacturers.
178.124 Firearms transaction record.
178.125 Record of receipt and dispositon.
178.125a Personal firearms collection.
178.126 Furnishing transaction information.
178.126a Reporting multiple sales or other disposition of pistols and revolvers.
178.127 Discontinuance of business.
178.128 False statement or representation.
178.129 Record retention.

Subpart I — Exemptions, Seizures, and Forfeitures

178.141 General.
178.142 Effect of pardons and expunctions of convictions.
178.143 Relief from disabilities incurred by indictment.
178.144 Relief from disabilities under the Act.
178.145 Research organizations.
178.146 Deliveries by mail to certain persons.
178.147 Return of firearm.
178.148 Armor-piercing ammunition intended for sporting or industrial purposes.
178.149 Seizure and forefeiture.

Subpart J–[Reserved]

Subpart K–Exportation

178.171 Exportation

Par. 9. Section 178.1 is revised to include a reference to Pub. L. 99–308 and 99–360 and remove a reference to the Federal Firearms Act provisions. As revised, § 178.1 reads as follows:

§ 178.1 Scope of regulations.

(a) *General.* The regulations contained in this part relate to commerce in firearms and ammunition and are promulgated to implement Title I, State Firearms Control Assistance (18 U.S.C. Chapter 44), of the Gun Control Act of 1968 (82 Stat. 1213) as amended by Pub. L. 99–308 (100 Stat. 449) and Pub. L. 99–360 (100 Stat. 766).

(b) *Procedural and substantive requirements.* This part contains the procedural and substantive requirements relative to:

(1) The interstate or foreign commerce in firearms and ammunition;

(2) The licensing of manufacturers and importers of firearms and ammunition, collectors of firearms, and dealers in firearms;

(3) The conduct of business or activity by licensees;

(4) The importation of firearms and ammunition;

(5) The records and reports required of licensees;

(6) Relief from disabilities under this part; and

(7) Exempt interstate and foreign commerce in firearms and ammunition.

Par. 10. Section 178.2 is revised to change a citation. As revised, § 178.2 reads as follows:

§ 178.2 Relation to other provisions of law.

The provisions in this part are in addition to, and are not in lieu of, any other provision of law, or regulations, respecting commerce in firearms or ammunition. For regulations applicable to traffic in machine guns, destructive devices, and certain other firearms, see Part 179 of this chapter. For statutes applicable to the registration and licensing of persons engaged in the business of manufacturing, importing or exporting arms, ammunition, or implements of war, see section 38 of the Arms Export Control Act (22 U.S.C. 2778) and regulations thereunder and Part 47 of this chapter. For statutes applicable to nonmailable firearms, see 18 U.S.C. 1715 and regulations thereunder.

Par. 11. Section 178.11 is amended by revising the definitions for Business premises, Collector, Crime punishable by imprisonment for a term exceeding 1 year, Curios or relics, Dealer, Importer, Licensed dealer, Licensed importer, Licensed manufacturer, Machine gun, Manufacturer, and Pawnbroker, adding the definitions for Armor-piercing ammunition, Engaged in the business, Firearm muffler or firearm silencer, and Principal objective of livelihood and profit; and by removing the definition for Service Center Director, to read as follows:

§ 178.11 Meaning of terms.

* * * * *

Armor-piercing ammunition. Projectiles or projectile cores which may be used in a handgun and which are constructed entirely (exlcuding the presence of traces or other substances) from one or a combination of tungsten alloys, steel, iron, brass, bronze, beryllium copper, or depleted uranium. The term does not include shotgun shot required by Federal or State environmental or game regulations for hunting purposes, frangible projectiles designed for target shooting, projectiles which the Director finds are primarily intended to be used for sporting purposes, or any other projectiles or projectile cores which the Director finds are intended to be used for industrial purposes, including charges used in oil and gas well perforating devices.

* * * * *

Business premises. The property on which the manufacturing or importing of firearms or ammunition or the dealing in firearms is or will be conducted. A private dwelling, no part of which is open to the public, shall not be recognized as coming within the meaning of the term.

* * * * *

Collector. Any person who acquires, holds, or disposes of firearms as curios or relics.

* * * * *

Crime punishable by imprisonment for a term exceeding 1 year. Any offense for which the maximum penalty, whether or not imposed, is capital punishment or imprisonment in excess of 1 year. The term shall not include (a) any Federal or State offenses pertaining to antitrust violations, unfair trade practices, restraints of trade, or other similar offenses relating to the regulation of business practices or (b) any State offense classified by the laws of the State as a misdemeanor and punishable by a term of imprisonment of 2 years or less. What constitutes a conviction of such a crime shall be determined in accordance with the law of the jurisdiction in which the proceedings were held. Any conviction which has been expunged or set aside or for which a person has been pardoned or has had civil rights restored shall not be considered a conviction for the purposes of the Act or this part, unless such pardon, expunction, or restoration of civil rights expressly provides that the person may not ship, transport, possess, or receive firearms, or unless the person is prohibited by law of the jurisdiction in which the proceedings were held from possessing any firearms.

Curios or relics. Firearms which are of special interest to collectors by reason of some quality other than firearms intended for sporting use or as offensive or defensive weapons. To be recognized as curios or relics, firearms must fall within one of the following categories;

(a) Firearms which were manufactured at least 50 years prior to the current date, but not including replicas thereof;

(b) Firearms which are certified by the curator of a municipal, State, or Federal museum which exhibits firearms to be curios or relics of museum interest; and

(c) Any other firearms which derive a substantial part of their monetary value from the fact that they are novel, rare, bizarre, or because of their association with some historical figure, period, or event. Proof of qualification of a particular firearm under this category may be established by evidence of present value and evidence that like firearms are not available except as collector's items, or that the value of like firearms available in ordinary commercial channels is substantially less.

* * * * *

Dealer. Any person engaged in the business of selling firearms at wholesale or retail; any person engaged in the business of repairing firearms or of making or fitting special barrels, stocks, or trigger mechanisms to firearms; or any person who is a pawnbroker. The term shall include any person who engages in such business or occupation on a part-time basis.

* * * * *

Engaged in the business—(a) *Manufacturer of firearms.* A person who devotes time, attention, and labor to manufacturing firearms as a regular course of trade or business with the principal objective of livelihood and profit through the sale or distribution of the firearms manufactured;

(b) *Manufacturer of ammunition.* A person who devotes time, attention, and labor to manufacturing ammunition as a regular course of trade or business with the principal objective of livelihood and profit through the sale or distribution to the ammunition manufactured;

(c) *Dealer in firearms other than a gunsmith or a pawnbroker.* A person who devotes time, attention, and labor to dealing in firearms as a regular course of trade or business with the principal objective of livelihood and profit through the repetitive purchase and resale of firearms, but such a term shall not include a person who makes occasional sales, exchanges, or purchases of firearms for the enhancement of a personal collection or for a hobby, or who sells all or part of his personal collection of firearms;

(d) *Gunsmith.* A person who devotes time, attention, and labor to engaging in such activity as a regular course of trade or business with the principal objective of livelihood and profit, but such a term shall not include a person who makes occasional repairs of firearms or who occasionally fits special barrels, stocks, or trigger mechanisms to firearms;

(e) *Importer of firearms.* A person who devotes time, attention, and labor to importing firearms as a regular course of trade or business with the principal objective of livelihood and profit through the sale or distribution of the firearms imported; and,

(f) *Importer of ammunition.* A person who devotes time, attention, and labor to importing ammunition as a regular course of trade or business with the principal objective of livelihood and profit through the sale or distribution of the ammunition imported.

* * * * *

Firearm muffler or firearm silencer. Any device for silencing, muffling, or diminishing the report of a portable firearm, including any combination of parts, designed or redesigned, and intended for use in assembling or fabricating a firearm silencer or firearm muffler, and any part intended only for use in such assembly or fabrication.

Importer. Any person engaged in the business of importing or bringing firearms or ammunition into the United States. The term shall include any person who engages in such business on a part-time basis.

* * * * *

Licensed dealer. A dealer licensed under the provisions of this part.

Licensed importer. An importer licensed under the provisions of this part.

Licensed manufacturer. A manufacturer licensed under the provisions of this part.

Machine gun. Any weapon which shoots, is designed to shoot, or can be readily restored to shoot, automatically more than one shot, without manual reloading, by a single function of the trigger. The term shall also include the frame or receiver of any such weapon, any part designed and intended solely and exclusively, or combination of parts designed and intended, for use in converting a weapon into a machine gun, and any combination of parts from which a machine gun can be assembled if such parts are in the possession or under the control of a person.

Manufacturer. Any person engaged in the business of manufacturing firearms or ammunition. The term shall include any person who engages in such business on a part-time basis.

Pawnbroker. Any person whose business or occupation includes the taking or receiving, by way of pledge or pawn, of any firearm as security for the payment or repayment of money. The term shall include any person who engages in such business on a part-time basis.

* * * * *

Principal objective of livelihood and profit. The intent underlying the sale or disposition of firearms is predominantly one of obtaining livelihood and pecuniary gain, as opposed to other intents such as improving or liquidating a personal firearms collection: *Provided,* That proof of profit shall not be required as to a person who engages in the regular and repetitive purchase and disposition of firearms for criminal purposes or terrorism. For purposes of this part, the term "terrorism" means activity, directed against United States persons, which–

(a) is committed by an individual who is not a national or permanent resident alien of the United States;

(b) involves violent acts or acts dangerous to human life which would be a criminal violation if committed within the jurisdiction of the United States; and

(c) is intended–

(1) to intimidate or coerce a civilian population;

(2) to influence the policy of a government by intimidation or coercion; or

(3) to affect the conduct of a government by assassination or kidnapping.

* * * * *

Par 12. Paragraph (c) of § 178.21 is revised to change the address at which ATF forms may be obtained. As revised, § 178.21(c) reads as follows:

§ 178.21 Forms prescribed.

* * * * *

(c) Requests for forms should be mailed to the ATF Distribution Center, 7943 Angus Court, Springfield, Virginia 22153.

* * * * *

Par. 13. Section 178.22 is revised to allow alternate methods and procedures in addition to emergency variations from requirements. As revised, § 178.22 reads as follows:

§ 178.22 Alternate methods or procedures; emergency variations from requirements.

(a) *Alternate methods or procedures.* The licensee, on specific approval by the Director as provided in this paragraph, may use an alternate method or procedure in lieu of a method or procedure specifically prescribed in this part. The Director may approve an alternate method or procedure, subject to stated conditions, when it is found that;

(1) Good cause is shown for the use of the alternate method or procedure;

(2) The alternate method or procedure is within the purpose of, and consistent with the effect intended by, the specifically prescribed method or procedure and that the alternate method or procedure is substantially equivalent to that specifically prescribed method or procedure; and

(3) The alternate method or procedure will not be contrary to any provision of law and will not result in an increase in cost to the Government or hinder the effective administration of this part. Where the licensee desires to employ an alternate method or procedure, a written application shall be submitted to the appropriate regional director (compliance), for transmittal to the Director. The application shall specifically describe the proposed alternate method or procedure and shall set forth the reasons for it. Alternate methods or procedures may not be employed until the application is approved by the Director. The licensee shall, during the period of authorization of an alternate method or procedure, comply with the terms of the approved application. Authorization of any alternate method or procedure may be withdrawn whenever, in the judgment of the Director, the effective administration of this part is hindered by the continuation of the authorization.

(b) *Emergency variations from requirements.* The Director may approve a method of operation other than as specified in this part, where it is found that an emergency exists and the proposed variation form the specified requirements are necessary and the proposed variations: (1) Will not hinder the effective administration of this part, and (2) will not be contrary to any provisions of law. Variations from requirements granted under this paragraph are conditioned on compliance with the procedures, conditions, and limitations set forth in the approval of the application. Failure to comply in good faith with the procedures, conditions, and limitations shall automatically terminate the authority for the variations, and the licensee shall fully comply with the prescribed requirements of regulations from which the variations were authorized. Authority for any variation may be withdrawn whenever, in the judgment of the Director, the effective administration of this part is hindered by the continuation of the variation. Where the licensee desires to employ an emergency variation, a written application shall be submitted to the appropriate regional director (compliance) for transmittal to the Director. The application shall describe the proposed variation and set forth the reasons for it. Variations may not be employed until the application is approved.

(c) *Retention of approved variations.* The licensee shall retain, as part of the licensee's records, available for examination by ATF officers, any application approved by the Director under this section.

Par. 14. Section 178.23 is revised to reflect the right of entry and examination of licensees' premises by ATF officers. As revised, § 178.23 reads as follows:

§ 178.23 Right of entry and examination.

(a) Except as provided in paragraph (b), any ATF officer, when there is reasonable cause to believe a violation of the Act has occurred and that evidence of the violation may be found on the premises of any licensed manufacturer, licensed importer, licensed dealer, or licensed collector, may, upon demonstrating such cause before a Federal magistrate and obtaining from the magistrate a warrant authorizing entry, enter during business hours the premises, including places of storage, of any such licensee for the purpose of inspecting or examining: (1) Any records or documents required to be kept by such licensee under this part and (2) any firearms or ammunition kept or stored by any such licensee at such premises.

(b) Any ATF officer, without having reasonable cause to believe a violation of the Act has occurred or that evidence of the violation may be found and without demonstrating such cause before a Federal magistrate or obtaining from the magistrate a warrant authorizing entry, may enter during business hours the premises, including places of storage, of any licensed manufacturer, licensed importer, or licensed dealer for the purpose of inspecting or examining the records, documents and firearms referred to in paragraph (a) of this section:

(1) In the course of a reasonable inquiry during the course of a criminal investigation of a person or persons other than the licensee;

(2) For insuring compliance with the recordkeeping requirements of this part not more than once during any 12-month period; or

(3) When such inspection or examination may be required for determining the disposition of one or more particular firearms in the course of a criminal investigation.

(c) Any ATF officer, without having reasonable cause to believe a violation of the Act has occurred or that evidence of the violation may be found and without demonstrating such cause before a Federal magistrate or obtaining from the magistrate a warrant authorizing entry, may enter during business hours the premises, including places of storage, of any licensed collector for the purpose of inspecting or examining the records, documents and firearms referred to in paragraph (a) of this section:

(1) For ensuring compliance with the recordkeeping requirements of this part not more than once during any 12-month period or (2) When such inspection or examination may be required for determining the disposition of one or more particular firearms in the course of a criminal investigation. At the election of the licensed collector, the annual inspection permitted by this paragraph shall be performed at the ATF office responsible for conducting such inspection in closest proximity to the collection premises.

(d) The inspections and examinations provided by this section do not authorize an ATF officer to seize any records or documents other than those records or documents constituting material evidence of a violation of law. If an ATF officer seizes such records or documents, copies shall be provided the licensee within a reasonable time.

Par. 15. Section 178.24 is revised to reflect the publication of State laws and published ordinances. As revised, § 178.24 reads as follows:

§ 178.24 List of State laws and published ordinances.

(a) The Director shall annually revise and furnish to Federal firearms licensees a list of State laws and published ordinances which are relevant to the enforcement of this part. The Director annually revises the list and publishes it as "State Laws and Published Ordinances—Firearms" which is furnished free of charge to licensees under this part. Where the list has previously been furnished to licensees, the Director need only furnish amendments of the relevant laws and ordinances to such licensees.

(b) "State Laws and Published Ordinances—Firearms" is incorporated by reference in this part. It is ATF Publication 5300.5, revised yearly. The current edition is for sale from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402. It is also available for inspection at the Office of the Federal Register, Room 8401, 1100 L Street, NW, Washington, DC. This incorporation by reference was approved by the Director of the Federal Register.

Par. 16. Section 178.25 is revised to prescribe the requirements for disclosure of information from the records of licensees to law enforcement agencies. As revised, § 178.25 reads as follows:

§ 178.25 Disclosure of information.

The regional director (compliance) may make available to any Federal, State or local law enforcement agency any information which is obtained by reason of the provisions of the Act with respect to the identification of persons prohibited from purchasing or receiving firearms or ammunition who have purchased or received firearms or ammunition, together with a description of such firearms or ammunition. Upon the request of any Federal, State or local law enforcement agency, the regional director (compliance) may provide such agency any information contained in the records required to be maintained by the Act or this part.

Par. 17. Section 178.26 is revised to remove reference to ammunition. As revised, § 178.26 reads as follows:

§ 178.26 Curio and relic determination.

A licensed collector who desires to obtain a determination whether a particular firearm is a curio or relic shall submit a written request, in duplicate, for a ruling thereon to the Director. Each such request shall be executed under the penalties of perjury and shall contain a complete and accurate description of the firearm, and such photographs, diagrams, or drawings as may be necessary to enable the Director to make a determination. The Director may require the submission of the firearm for examination and evaluation. If the submission of the firearm is impractical, the licensed collector shall so advise the Director and designate the place where the firearm will be available for examination and evaluation.

Par. 18. Section 178.29 is revised to provide for nonlicensees' acquisition of rifles and shotguns out-of-State from licensees. As revised, § 178.29 reads as follows:

§ 178.29 Out-of-State acquisition of firearms by nonlicensees.

No person, other than a licensed importer, licensed manufacturer, licensed dealer, or licensed collector, shall transport into or receive in the State where the person resides (or if a corporation or other business entity, where it maintains a place of business) any firearm purchased or otherwise obtained by such person outside that State: *Provided,* That the provisions of this section:

(a) Shall not preclude any person who lawfully acquires a firearm by bequest or interstate succession in a State other than his State of residence from transporting the firearm into or receiving it in that State, if it is lawful for such person to purchase or possess such firearm in that State, and

(b) Shall not apply to the transportation or receipt of a rifle or shotgun obtained from a licensed manufacturer, licensed importer, licensed dealer, or licensed collector in a State other than the transferee's State of residence in an over-the-counter transaction at the licensee's premises obtained in conformity with the provisions of § 178.97.

Par. 19. Section 178.32 is revised to reflect changes in the categories of persons prohibited from possessing and receiving firearms and ammunition. As revised, § 178.32 reads as follows:

§ 178.32 Prohibited shipment, transportation, possession, or receipt of firearms and ammunition by certain persons.

(a) No person may ship or transport any firearm or ammunition in interstate or foreign commerce, or receive any firearm or ammunition which has been shipped or transported in interstate or foreign commerce, or possess any firearm or ammunition in or affecting commerce, who:

(1) Has been convicted of a crime punishable by imprisonment for a term exceeding 1 year;

(2) Is a fugitive from justice;

(3) Is an unlawful user of or addicted to any controlled substance (as defined in section 102 of the Controlled Substances Act, 21 U.S.C. 802);

(4) Has been adjudicated as a mental defective or has been committed to a mental institution;

(5) Is an alien illegally or unlawfully in the United States;

(6) Has been discharged from the Armed Forces under dishonorable conditions; or

(7) Having been a citizen of the United States, has renounced citizenship.

(b) No person who is under indictment for a crime punishable by imprisonment for a term exceeding one year may ship or transport any firearm or ammunition in interstate or foreign commerce or receive any firearm or ammunition which has been shipped or transported in interstate or foreign commerce.

(c) Any individual, who to that individual's knowledge and while being employed by any person described in paragraph (a) of this section, may not in the course of such employment receive, possess, or transport any firearm or ammunition in commerce or affecting commerce or receive any firearm or ammunition which has been shipped or transported in interstate or foreign commerce.

(d) No person may sell or otherwise dispose of any firearm or ammunition to any person knowing or having reasonable cause to believe that such person:

(1) Is under indictment for, or has been convicted in any court of, a crime punishable by imprisonment for a term exceeding 1 year;

(2) Is a fugitive from justice;

(3) Is an unlawful user of or addicted to any controlled substance (as defined in section 102 of the Controlled Substances Act, 21 U.S.C. 802);

(4) Has been adjudicated as a mental defective or has been committed to a mental institution;

(5) Is an alien illegally or unlawfully in the United States;

(6) Has been discharged from the Armed Forces under dishonorable conditions; or

(7) Having been a citizen of the United States, has renounced citizenship.

Par. 20. Section 178.36 Is added to reflect the prohibitions on the transfer and possession of machine guns. As added, § 178.36 reads as follows:

§ 178.36 Transfer or possession of machine guns.

No person shall transfer or possess a machine gun except:

(a) A transfer to or by, or possession by or under the authority of, the United States, or any department or agency thereof, or a State, or a department, agency, or political subdivision thereof (See Part 179 of this chapter); or

(b) Any lawful transfer or lawful possession of a machine gun that was lawfully possessed before May 19, 1986 (See Part 179 of this chapter).

Par. 21. Section 178.41 is amended by revising paragraphs (a) and (b) to read as follows:

§ 178.41 General.

(a) Each person intending to engage in business as an importer or manufacturer of firearms or ammunition, or a dealer in firearms, shall, before commencing such business, obtain the license required by this subpart for the business to be operated. Each person who desires to obtain the privileges granted by the Act and this part to a licensed collector may obtain such a license under the provisions of this subpart.

(b) Each person intending to engage in business as a firearms or ammunition importer or manufacturer, or dealer in firearms shall file an application, with the required fee (see § 178.42), with ATF in accordance with the instructions on the form (see § 178.44), and, pursuant to § 178.47, receive the license required for such business from the Regional director (compliance). Except as provided in § 178.50, a license must be obtained for each business and each place at which the applicant is to do business. A license as an importer or manufacturer of firearms or ammunition, or a dealer in firearms shall, subject to the provisions of the Act and other applicable provisions of law, entitle the licensee to transport, ship, and receive firearms and ammunition covered by such license in interstate or foreign commerce and to engage in the business specified by the license, at the location described on the license, and for the period stated on the license. However, it shall not be necessary for a licensed importer or a licensed manufacturer to also obtain a dealer's license in order to engage in business on the licensed premises as a dealer in the same type of firearms authorized by his license to be imported or manufactured. Payment of the license fee as an importer or manufacturer of destructive devices or ammunition for destructive devices or as a dealer in destructive devices includes the privilege of importing or manufacturing firearms other than destructive devices and ammunition for other than destructive devices, or dealing in firearms other than destructive devices, as the case may be, by such a licensee at his licensed premises.

* * * * *

Par. 22. Section 178.42 is revised to remove reference to dealing in ammunition. As revised, § 178.42 reads as follows:

§ 178.42 License fees.

Each applicant shall pay a fee at a yearly rate for obtaining a firearms license or ammunition license, a separate fee being required for each business or collecting activity at each place of such business or activity, as follows:

(a) For a manufacturer:

(1) Of destructive devices or ammunition for destructive devices—$1,000 per year.

(2) Of firearms other than destructive devices—$50 per year.

(3) Of ammunition for firearms other than destructive devices—$10 per year.

(b) For an importer:

(1) Of destructive devices or ammunition for destructive devices—$1,000 per year.

(2) Of firearms other than destructive devices or ammunition for firearms other than destructive devices—$50 per year.

(c) For a dealer:

(1) In destructive devices—$1,000 per year.

(2) Who is a pawnbroker dealing in firearms other than destructive devices—$25 per year.

(3) Who is not a dealer in destructive devices or a pawnbroker—$10 per year.

(d) For a collector of curios and relics—$10 per year.

Par. 23. Section 178.44 is revised to update the description of ATF forms and the location where forms are sent. As revised, § 178.44 reads as follows:

§ 178.44 Original license.

(a) Any person who intends to engage in business as a firearms or ammunition importer or manufacturer, or firearms dealer, or who has not previously been licensed under the provisions of this part to so engage in business, or who has not timely submitted an application for renewal of the previous license issued under this part, shall file an application for license, ATF Form 7 (Firearms), in duplicate, with ATF in accordance with the instructions on the form. The application must be executed under the penalties of perjury and the penalties imposed by 18 U.S.C. 924. The application shall be accompanied by the appropriate fee in the form of money order or check made payable to the Bureau of Alcohol, Tobacco and Firearms. ATF Forms 7 (Firearms) may be obtained from any ATF office.

(b) Any person who desires to obtain the privileges granted to a licensed collector under the Act and this part, or who has not timely submitted an application for renewal of the previous license issued under this part, shall file an application, ATF Form 7 (Firearms), in duplicate, with ATF in accordance with the instructions on the form. The application must be executed under the penalties of perjury and the penalties imposed by 18 U.S.C. 924. The application shall be accompanied by the appropriate fee in the form of a money order or check made payable to the Bureau of Alcohol, Tobacco and Firearms. ATF Forms 7 (Firearms) may be obtained from any ATF office.

(18 U.S.C. 926 (82 Stat. 1226))

Par. 24. Section 178.45 is revised to update the description of ATF forms and change the location where the forms are sent. As revised, § 178.45 reads as follows:

§ 178.45 Renewal of license.

If a licensee intends to continue the business or activity described on a license issued under this part during any portion of the ensuing year, the licensee shall, unless otherwise notified in writing by the regional director (compliance), execute and file prior to the expiration of the license an application for a license renewal, ATF Form 8 Part II, accompanied by the required fee, with ATF in accordance with the instructions on the form. The regional director (compliance) may, in writing, require the applicant for license renewal to also file completed ATF Form 7 in the manner required by § 178.44. In the event the licensee does not timely file an ATF Form 8 Part II, the licensee must file an ATF Form 7 as required by § 178.44, and obtain the required license before continuing business or collecting activity. If an ATF Form 8 Part II is not timely received through the mails, the licensee should so notify the regional director (compliance).

(18 U.S.C. 926 (82 Stat. 1226))

Par. 25. Section 178.47 is amended by removing paragraph (b)(6) and revising paragraphs (a), (b) introductory text, and (b) (1) and (2) to read as follows:

§ 178.47 Issuance of license.

(a) Upon receipt of a properly executed application for a license on ATF Form 7, or ATF Form 8 Part II, the regional director (compliance) may, upon finding through further inquiry or investigation, or otherwise, that the applicant is entitled thereto, issue the appropriate license. Each license shall bear a serial number and such number may be assigned to the licensee to whom issued for so long as the licensee maintains continuity or renewal in the same location (State).

(b) The regional director (compliance) shall approve a properly executed application for license on ATF Form 7, or ATF Form 8 Part II, if:

(1) The applicant is 21 years of age or over;

(2) The applicant (including, in the case of a corporation, partnership, or association, any individual possessing, directly or indirectly, the power to direct or cause the direction of the management or policies of the corporation, partnership, or association) is not prohibited under the provisions of the Act from shipping or transporting in interstate or foreign commerce, or possessing in or affecting commerce, any firearm or ammunition, or from receiving any firearm or ammunition which has been shipped or transported in interstate or foreign commerce;

* * * * *

Par. 26. Section 178.49 is revised to remove the obsolete one and two year license provisions. As revised, § 178.49 reads as follows:

§ 178.49 Duration of license.

The license entitles the person to whom issued to engage in the business or activity specified on the license, within the limitations of the Act and the regulations contained in this part, for a three year period, unless terminated sooner.

Par. 27. Section 178.73 is revised to provide for revised revocation procedures. As revised, § 178.73 reads as follows:

§ 178.73 Notice of revocation.

Whenever the regional director (compliance) believes that a licensee has violated any provision of the Act or this part, a notice of revocation of the license, ATF Form 4500, may be issued. The notice shall set forth the matters of fact constituting the violations specified, dates, places, and the sections of law and regulations violated. The regional director (compliance) shall afford the licensee 15 days from the date of receipt of the notice in which to request a hearing prior to revocation of the license. If the licensee does not file a timely request for a hearing, the regional director (compliance) shall issue a final notice of revocation, ATF Form 4501, as provided in § 178.74.

Par. 28. Section 178.74 is revised to provide for a hearing after a notice of revocation. As revised, § 178.74 reads as follows:

§ 178.74 Request for hearing after notice of revocation.

If a licensee desires a hearing after receipt of a notice of revocation of a license, the licensee shall file a request, in duplicate, with the regional director (compliance) within 15 days after receipt of the notice of revocation. On receipt of such request, the regional director (compliance) shall, as expeditiously as possible, make necessary arrangements for the hearing and advise the licensee of the date, time, location and the name of the officer before whom the hearing will be held. Such notification shall be made not less than 10 days in advance of the date set for hearing. On conclusion of the hearing and consideration of all the relevant presentations made by the licensee or the licensee's representative, the regional director (compliance) shall render a decision and shall prepare a brief summary of the findings and conclusions on which the decision is based. If the decision is that the license should be revoked, a certified copy of the summary shall be furnished to the licensee with the final notice of revocation on ATF Form 4501. If the decision is that the license should not be revoked, the licensee shall be notified in writing.

Par. 29. Sections 178.75, 178.76, 178.77, and 178.78 are removed and §§ 178.79, 178.80, 178.81, and 178.82 are redesignated as §§ 178.75-178.78 and newly redesignated § 178.77 is revised to read as follows:

§ 178.77 Designated place of hearing.

The designated place of the hearing shall be a location convenient to the aggrieved party.

Par. 30. Section 178.92 is revised to reflect the firearms identification requirements with respect to certain parts defined as firearms. As revised, § 178.92 reads as follows:

§ 178.92 Identification of firearms.

Each licensed manufacturer or licensed importer of any firearm manufactured or imported shall legibly identify each such firearm by engraving, casting, stamping (impressing), or otherwise conspicuously placing or causing to be engraved, cast, stamped (impressed) or placed on the frame or receiver thereof in a manner not susceptible of being readily obliterated, altered, or removed, an individual serial number not duplicating any serial number placed by the manufacturer or importer on any other firearm, and by engraving, casting, stamping (impressing), or otherwise conspicuously placing or causing to be engraved, cast, stamped (impressed) or placed on the frame, receiver, or barrel thereof in a manner not susceptible of being readily obliterated, altered or removed, the model, if such designation has been made; the caliber or guage; the name (or recognized abbreviation of same) of the manufacturer and also, when applicable, of the importer; in the case of a domestically made firearm, the city and State (or recognized abbreviation thereof) wherein the licensed manufacturer maintains its place of business; and in the case of an importer firearm, the name of the country in which manufactured and the city and State (or recognized abbreviation thereof) of the importer: *Provided,* That the Director may authorize other means of identification of the licensed manufacturer or licensed importer upon receipt of letter application, in duplicate, showing that such other identification is reasonable and will not hinder the effective administration of this part: *Provided, further,* That in the case of a destructive device, the Director may authorize other means of identifying that weapon upon receipt of letter application, in duplicate, from the licensed manufacturer or licensed importer showing that engraving, casting, or stamping (impressing) such a weapon would be dangerous or impracticable. A firearm frame or receiver, or any part defined as a machine gun, firearm muffler, or firearm silencer in § 178.11, which is not a component part of a complete weapon at the time it is sold, shipped, or otherwise disposed of by a licensed manufacturer or licensed importer, shall be identified as required by this section.

Par. 31. Section 178.93 is revised to remove reference to ammunition curios or relics. As revised, § 178.93 reads as follows:

§ 178.93 Authorized operations by a licensed collector.

The license issued to a collector of curios or relics under the provisions of this part shall cover only transactions by the licensed collector in curios and relics. The collector's license is of no force or effect and a licensed collector is of the same status under the Act and this part as a nonlicensee with respect to (a) any acquisition or disposition of firearms other than curios or relics, or any transportation, shipment, or receipt of firearms other than curios or relics in interstate or foreign commerce, and (b) any transaction with a nonlicensee involving any firearm other than a curio or relic. (See also § 178.50.)

Par. 32. Section 178.94 is revised to remove a reference to ammunition and eliminate the furnishing of license copies to other licensees where firearms are being returned. As revised, § 178.94 reads as follows:

§ 178.94 Sales or deliveries between licensees.

A licensed importer, licensed manufacturer, or licensed dealer selling or otherwise disposing of firearms, and a licensed collector selling or otherwise disposing of curios or relics to another licensee shall verify the identity and licensed status of the transferee prior to making the transaction. Verification shall be established by the transferee furnishing to the transferor a certified copy of the transferee's license and by such other means as the transferor deems necessary: *Provided,* That it shall not be required (a) for a transferee who has furnished a certified copy of its license to a transferor to again furnish such certified copy to that transferor during the term of the transferee's current license, (b) for a licensee to furnish a certified copy of its license to another licensee if a firearm is being returned to such licensee and (c) for licensees of multilicensed business organizations to furnish certified copies of their licenses to other licensed locations operated by such organization: *Provided further,* That a multilicensed business organization may furnish to a transferor, in lieu of a certified copy of each license, a list, certified to be true, correct and complete, containing the name, address, license number, and the date of license expiration of each licensed location operated by such organization, and the transferor may sell or otherwise dispose of firearms as provided by this section to any licensee appearing on such list without requiring a certified copy of a license therefrom. A transferor licensee who has the certified information required by this section may sell or dispose of firearms to a licensee for not more than 45 days following the expiration date of the transferee's license.

(Approved by the Office of Management and Budget under control number 1512-0387)

Par. 33. Section 178.95 is revised to provide for payment to ATF of fees for license copies. As revised, § 178.95 reads as follows:

§ 178.95 Certified copy of license.

The license furnished to each person licensed under the provisions of this part contains a purchasing certification statement. This original license may be reproduced and the reproduction then certified by the licensee for use pursuant to § 178.94. If the licensee desires an additional copy of the license for certification (instead of making a reproduction of the original license), the licensee may submit a request, in writing, for a certified copy or copies of the license to the regional director (compliance) for the region in which the premises is located. The request must set forth the name, trade name (if any) and address of the licensee, and the number of license copies desired. There is a charge of $1 for each copy. The fee paid for copies of the license must accompany the request for copies. The fee may be paid by (a) cash, or (b) money order or check made payable to the Bureau of Alcohol, Tobacco and Firearms.

(Approved by the Office of Management and Budget under control number 1512-0387)

Par. 34. Section 178.96 is amended by revising paragraph (c) and removing (d) to read as follows:

§ 178.96 Out-of-State and mail order sales.

* * * * *

(c) A licensed importer, licensed manufacturer, or licensed dealer may sell or deliver a rifle or shotgun, and a licensed collector may sell or deliver a rifle or shotgun which is a curio or relic, to a nonlicensed resident of a State other than the State in which the licensee's place of business is located if the purchaser meets with the licensee in person at the licensee's premises to accomplish the transfer, sale and delivery of the rifle or shotgun and the sale, delivery and receipt fully comply with the legal conditions of sale in both such States. For purposes of this paragraph, any licensed manufacturer, licensed importer, or licensed dealer is presumed, in the absence of evidence to the contrary, to have had actual knowledge of the State laws and published ordinances of both such States.

(Approved by the Office of Management and Budget under control number 1512-0130)

Par. 35. Section 178.98 is revised to change certain administrative procedures for sales or deliveries of destructive devices and certain firearms. As revised, § 178.98 reads as follows:

§ 178.98 Sales or deliveries of destructive devices and certain firearms.

The sale or delivery by a licensee of any destructive device, machine gun, short-barreled shotgun, or short-barreled rifle, to any person other than another licensee who is licensed under this part to deal in such device or firearm, is prohibited unless the person to receive such device or firearm furnishes to the licensee a sworn statement setting forth (a) the reasons why there is a reasonable necessity for such person to purchase or otherwise acquire the device or weapon, and (b) that such person's receipt or possession of the device or weapon would be consistent with public safety. Such sworn statement shall be made on the application to transfer and register the firearm required by Part 179 of this chapter. The sale or delivery of the device or weapon shall not be made until the application for transfer is approved by the Director and returned to the licensee (transferor) as provided in Part 179 of this chapter.

Par. 36. Section 178.99 is revised to reflect changes in the categories of persons prohibited from possessing and receiving firearms and ammunition. As revised, § 178.99 reads as follows:

§ 178.99 Certain prohibited sales or deliveries.

(a) A licensed importer, licensed manufacturer, licensed dealer, or licensed collector shall not sell or deliver any firearm to any person not licensed under this part and who the licensee knows or has reasonable cause to believe does not reside in (or if a corporation or other business entity, does not maintain a place of business in) the State in which the licensee's place of business or activity is located: *Provided*, That the foregoing provisions of this paragraph:

(1) Shall not apply to the sale or delivery of a rifle or shotgun (curio or relic, in the case of a licensed collector) to a resident of a State other than the State in which the licensee's place of business or collection premises is located if the requirements of § 178.96(c) are fully met, and

(2) Shall not apply to the loan or rental of a firearm to any person for temporary use for lawful sporting purposes (see § 178.97).

(b) A licensed importer, licensed manufacturer, licensed dealer, or licensed collector shall not sell or deliver:

(1) Any firearm or ammunition to any individual who the importer, manufacturer, dealer, or collector knows or has reasonable cause to believe is less than 18 years of age, and, if the firearm, or ammunition, is other than a shotgun or rifle, or ammunition for a shotgun or rifle, to any individual who the importer, manufacturer, dealer, or collector knows or has reasonable cause to believe is less than 21 years of age, or

(2) Any firearm to any person in any State where the purchase or possession by such person of such firearm would be in violation of any State law or any published ordinance applicable at the place of sale, delivery or other disposition, unless the importer, manufacturer, dealer or collector knows or has reasonable cause to believe that the purchase or possession would not be in violation of such State law or such published ordinance.

(c) A licensed manufacturer, licensed importer, licensed dealer, or licensed collector shall not sell or otherwise dispose of any firearm or ammunition to any person knowing or having reasonable cause to believe that such person:

(1) Is, except as provided by § 178.143, under indictment for, or, except as provided by § 178.144, has been convicted in any court of a crime punishable by imprisonment for a term exceeding 1 year;

(2) Is a fugitive from justice;

(3) Is an unlawful user of or addicted to any controlled substance (as defined in section 102 of the Controlled Substance Act, 21 U.S.C. 802);

(4) Has been adjudicated as a mental defective or has been committed to any mental institution,

(5) Is an alien illegally or unlawfully in the United States;

(6) Has been discharged from the Armed Forces under dishonorable conditions, or

(7) Who, having been a citizen of the United States, has renounced citizenship.

Par. 37. Section 178.100 is amended to revise procedures for sales at gun shows. As revised, § 178.100 reads as follows:

§ 178.100 Conduct of business away from licensed premises.

(a) A licensee may conduct business temporarily at a gun show if the gun show is located in the same State specified on the license: *Provided*, That such business shall not be conducted from any motorized or towed vehicle. The premises of the gun show at which the licensee conducts business shall be considered part of the licensed premises. Accordingly, no separate fee or license is required for the gun show locations. However, licensees shall comply with the provisions of § 178.91 relating to posting of licenses (or a copy thereof) while conducting business at the gun show.

(b) A gun show is an event sponsored by any national, State, or local organization, devoted to the collection, competitive use, or other sporting use of firearms, or an organization or association that sponsors events devoted to the collection, competitive use or other sporting use of firearms in the community.

(c) Licensees conducting business at gun shows shall maintain firearms and armor-piercing ammunition records in the form and manner prescribed by Subpart H of this part. In addition, records of receipt and disposition of firearms transactions conducted at gun shows shall include the location of the sale or other disposition and be entered in the required records of the licensee and retained on the premises specified on the license.

Par. 38. Section 178.111 is revised to include the importation of firearm barrels. As revised, § 178.111 reads as follows:

§ 178.111 General.

(a) Section 922(a)(3) of the Act makes it unlawful, with certain exceptions not pertinent here, for any person other than a licensee to transport into or receive in the State where the person resides any firearm purchased or otherwise obtained by the person outside of that State.

However, section 925(a)(4) provides a limited exception for the transportation, shipment, receipt or importation of certain firearms and ammunition by certain members of the United States Armed Forces. Section 922(1) of the Act makes it unlawful for any person knowingly to import or bring into the United States or any possession thereof any firearm or ammunition except as provided by section 925(d) of the Act, which section provides standards for importing or bringing firearms or ammunition into the United States. Section 925(d) also provides standards for importing or bringing firearm barrels into the United States. Accordingly, no firearm, firearm barrel, or ammunition may be imported or brought into the United States except as provided by this part.

(b) Where a firearm, firearm barrel, or ammunition is imported and the authorization for importation required by this subpart has not been obtained by the person importing same, such person shall:

(1) Store, at the person's expense, such firearm, firearm barrel, or ammunition at a facility designated by U.S. Customs or the regional director (compliance) to await the issuance of the required authorization or other disposition; or

(2) Abandon such firearm, firearm barrel, or ammunition to the U.S. Government; or

(3) Export such firearm, firearm barrel, or ammunition.

(c) Any inquiry relative to the provisions or procedures under this subpart, other than that pertaining to the payment of customs duties or the release from Customs custody of firearms, firearm barrels, or ammunition authorized by the Director to be imported, shall be directed to the regional director (compliance) for reply.

Par. 39. Section 178.112 is revised to include the importation of firearm barrels and update administrative procedures. As revised, § 178.112 reads as follows:

§ 178.112 Importation by a licensed importer.

(a) No firearm, firearm barrel, or ammunition shall be imported or brought into the United States by a licensed importer (as defined in § 178.11) unless the Director has authorized the importation of the firearm, firearm barrel, or ammunition.

(b) An application for a permit, ATF Form 6, to import or bring a firearm, firearm barrel, or ammunition into the United States or a possession thereof under this section shall be filed, in triplicate, with the Director. The application shall contain:

(1) The name, address, and license number of the importer;

(2) A description of the firearm, firearm barrel, or ammunition to be imported, including type (e.g.; rifle,

shotgun, pistol, revolver; and in the case of ammunition only, ball, wadcutter), model, caliber, size or gauge, barrel length (if a firearm or firearm barrel), country of manufacture, and name of the manufacturer;

(3) The unit cost of the firearm, firearm barrel, or ammunition to be imported;

(4) The country from which to be imported,

(5) The name and address of the foreign seller and the foreign shipper;

(6) Verification that if a firearm, it will be identified as required by this part; and

(7)(i) If a firearm or ammunition imported or brought in for scientific or research purposes, a statement describing such purposes; or

(ii) If a firearm or ammunition for use in connection with competition or training pursuant to Chapter 401 of Title 10, U.S.C., a statement describing such intended use, or

(iii) If an unserviceable firearm (other than a machine gun) being imported as a curio or museum piece, a description of how it was rendered unserviceable and an explanation of why it is a curio or museum piece; or

(iv) If a firearm of a type that does not fall within the definition of a firearm under section 5845(a) of the Internal Revenue Code of 1954, or a barrel for such firearm, and is for sporting purposes, an explanation of why the applicant believes the firearm is generally recognized as particularly suitable for or readily adaptable to sporting purposes or is a barrel for such firearm.

If the Director approves the application, such approved application shall serve as the permit to import the firearm, firearm barrel, or ammunition described therein, and importation of such firearms, firearm barrels, or ammunition may continue to be made by the licensed importer under the approved application (permit) during the period specified thereon. The Director shall furnish the approved application (permit) to the applicant and retain two copies thereof for administrative use. If the Director disapproves the application, the licensed importer shall be notified of the basis for the disapproval.

(c) A firearm, firearm barrel, or ammunition imported or brought into the United States by a licensed importer may be released from Customs custody to the licensed importer upon showing that the importer has obtained a permit from the Director for the importation of the firearm, firearm barrel, or ammunition to be released. In obtaining the release from Customs custody of a firearm, firearm barrel, or ammunition authorized by this section to be imported through use of a permit, the licensed importer shall prepare ATF Form 6A, in duplicate, and furnish the original ATF Form 6A to the Customs officer releasing the firearm, firearm barrel, or ammunition. The Customs officer shall, after certification, forward the ATF Form 6A to the address specified on the form. The ATF Form 6A shall show the name, address, and license number of the importer, the name of the manufacturer of the firearm, firearm barrel, or ammunition, the country of manufacture, the type, model, and caliber, size or gauge, and the number of firearms, firearm barrels, or rounds of ammunition released.

(d) Within 15 days of the date of release from Customs custody, the licensed importer shall: (1) Forward to the address specified on the form a copy of ATF Form 6A on which shall be reported any error or discrepancy appearing on the ATF Form 6A certified by Customs, (2) pursuant to § 178.92, place all required identification data on each imported firearm if same did not bear such identification data at the time of its release from Customs custody, and (3) post in the records required to be maintained by the importer under Subpart H of this part all required information regarding the importation.

Par. 40. Section 178.113 is revised to include the importation of firearm barrels and update administrative procedures. As revised, § 178.113 reads as follows:

§ 178.113 Importation by other licensees.

(a) No person other than a licensed importer (as defined in § 178.11) shall engage in the business of importing firearms, firearm barrels, or ammunition. Therefore, no firearm, firearm barrel, or ammunition shall be imported or brought into the United States or a possession thereof by any licensee other than a licensed importer unless the Director issues a permit authorizing the importation of the firearm, firearm barrel, or ammunition.

(b) An application for a permit, ATF Form 6, to import or bring a firearm, firearm barrel or ammunition into the United States or a possession thereof by a licensee, other than a licensed importer, shall be filed, in triplicate, with the Director. The application shall contain:

(1) The name, address, and license number of the applicant;

(2) A description of the firearm, firearm barrel or ammunition to be imported, including type (e.g.; rifle, shotgun, pistol, revolver; and in the case of ammunition only, ball, wadcutter), model, caliber, size or gauge, barrel length (if a firearm or firearm barrel), country of manufacture, and name of the manufacturer;

(3) The unit cost of the firearm, firearm barrel or ammunition to be imported;

(4) The name and address of the foreign seller and the foreign shipper;

(5) The country from which the firearm, firearm barrel, or ammunition is to be imported; and

(6)(i) If a firearm or ammunition imported or brought in for scientific or research purposes, a statement describing such purposes; or

(ii) If a firearm or ammunition for use in connection with competition or training pursuant to Chapter 401 of Title 10, U.S.C., a statement describing such intended use; or

(iii) If an unservicable firearm (other than a machine gun) being imported as a curio or museum piece, a description of how it was rendered unserviceable and an explanation of why it is a curio or museum piece; or

(iv) If a firearm or firearm barrel other than a surplus military firearm or barrel for such firearm, of a type that does not fall within the definition of a firearm under section 5845(a) of the Internal Revenue Code of 1954 and is for sporting purposes, an explanation of why the applicant believes the firearm or firearm barrel is generally recognized as particularly suitable for or readily adaptable to sporting purposes; or

(v) If ammunition being imported for sporting purposes, a statement why the applicant believes it is generally recognized as particularly suitable for or readily adaptable to sporting purposes. If the Director approves the application, such approved application shall serve as the permit to import the firearm, firearm barrel or ammunition described therein. The Director shall furnish the approved application (permit) to the applicant and retain two copies thereof for administrative use. If the Director disapproves the application, the applicant shall be notified of the basis for the disapproval.

(c) A firearm, firearm barrel, or ammunition imported or brought into the United States or a possession thereof under the provisions of this section may be released from Customs custody to the licensee importing the firearm, firearm barrel, or ammunition upon showing that the licensee has obtained a permit from the Director for the importation. In obtaining the release of the firearm, firearm barrel, or ammunition from Customs custody, the licensee importing same shall furnish ATF Form 6A to the Customs officer releasing the firearm, firearm barrel, or ammunition. The Customs officer shall, after certification, forward the ATF Form 6A to the address specified on the form. The ATF Form 6A shall show the name, address, and the license number of the licensee, the name of the manufacturer, the country of manufacture, and the type, model, and caliber, size (if ammunition) or gauge of the firearm, firearm barrel or ammunition so released, and, if applicable, the number of firearms, firearm barrels, or rounds of ammunition released.

Par. 41. Section 178.114 is revised to update administrative procedures. As revised, § 178.114 reads as follows:

§ 178.114 Importation by members of the U.S. Armed Forces.

(a) The Director may issue a permit authorizing the importation of a firearm or ammunition into the United States to the place of residence of any military member of the U.S. Armed Forces who is on active duty outside the United States, or who has been on active duty outside the United States within the 60-day period immediately preceding the intended importation: *Provided,* That such firearm or ammunition is generally recognized as particularly suitable for or readily adaptable to sporting purposes and is intended for the personal use of such member. An application for such a permit, ATF Form 6, shall be filed, in triplicate, with the Director. The application shall contain:

(1) The name and current address of the applicant;

(2) Certification that the transportation, receipt, or possession of the firearm or ammunition to be imported would not constitute a violation of any provision of the Act or of any State law or local ordinance at the place of the applicant's residence;

(3) A description of the firearm or ammunition to be imported, including type (e.g.; rifle, shotgun, pistol, revolver; and in the case of ammunition only, ball wadcutter), model, caliber, size or gauge, barrel length (if a firearm), country of manufacture, and the name of the manufacturer;

(4) The unit cost of the firearm or ammunition to be imported;

(5) The name and address of the foreign seller (if applicable) and the foreign shipper;

(6) The country from which the firearm or ammunition is to be imported;

(7)(i) That the firearm or ammunition being imported is for the personal use of the applicant; and

(ii) if a firearm, a statement that it is not a surplus military firearm, that it does not fall within the definition of a firearm under section 5845(a) of the Internal Revenue Code of 1954, and an explanation of why the applicant believes the firearm is generally recognized as particularly suitable for or readily adaptable to sporting purposes; or

(iii) if ammunition, a statement why the applicant believes it is generally recognized as particularly suitable for or readily adaptable to sporting purposes; and

(8) The applicant's date of birth, rank or grade, place of residence, present foreign duty station or last foreign duty station, as the case may be, the date of the applicant's reassignment to a duty station within the United States, if applicable, and the military branch of which the applicant is a member. If the Director approves the application, such approved application shall serve as the permit to import the

firearm or ammunition described therein. The Director shall furnish the approved application (permit) to the applicant and shall retain the two copies thereof for administrative purposes. If the Director disapproves the application, the applicant shall be notified of the basis for the disapproval.

(b) Upon receipt of an approved application (permit) to import the firearm or ammunition, the applicant may obtain the release of same from Customs custody upon showing that the applicant has obtained a permit from the Director for the importation. In obtaining the release of the firearm or ammunition from Customs custody, the military member of the U.S. Armed Forces importing same shall furnish ATF Form 6A to the Customs officer releasing the firearm or ammunition. The Customs officer shall, after certification, forward the ATF Form 6A to the address specified on the form. The ATF Form 6A shall show the name and address of such military member, the name of the manufacturer, the country of manufacture, and the type, model, and caliber, size or gauge of the firearm or ammunition so released, and, if applicable, the number of firearms or rounds of ammunition released. However, when such military member is on active duty outside the United States, the military member may appoint, in writing, an agent to obtain the release of the firearm or ammunition from Customs custody for such member. Such agent shall present sufficient identification of the agent and the written authorization to act on behalf of such military member to the Customs officer who is to release the firearm or ammunition.

(c) Firearms determined by the Department of Defense to be war souvenirs may be imported into the United States by the military members of the U.S. Armed Forces under such provisions and procedures as the Department of Defense may issue.

Par. 42. Section 178.115(b) is revised to include the importation of firearm barrels. As revised, § 178.115(b) reads as follows:

§ 178.115 Exempt importation.

* * * * *

(b) Firearms, firearm barrels and ammunition may be imported or brought into the United States by or for the United States or any department or agency thereof, or any State or any department, agency, or political subdivision thereof. A firearm, firearm barrel or ammunition imported or brought into the United States under this paragraph may be released from Customs custody upon a showing that the firearm or ammunition is being imported or brought into the United States by or for such a governmental entity.

* * * * *

Par. 43. Section 178.116 is revised to include the importation of firearm barrels. As revised, § 178.116 reads as follows:

§ 178.116 Conditional importation.

The Director shall permit the conditional importation or bringing into the United States or any possession thereof of any firearm, firearm barrel, or ammunition for the purpose of examining and testing the firearm, firearm barrel, or ammunition in connection with making a determination as to whether the importation or bringing in of such firearm, firearm barrel, or ammunition will be authorized under this part. An application on ATF Form 6 for such conditional importation shall be filed, in duplicate, with the Director. The Director may impose conditions upon any importation under this section including a requirement that the firearm, firearm barrel, or ammunition be shipped directly from Customs custody to the Director and that the person importing or bringing in the firearm, firearm barrel, or ammunition must agree to either export the firearm, firearm barrel, or ammunition or destroy same if a determination is made that the firearm, firearm barrel, or ammunition may not be imported or brought in under this part. A firearm, firearm barrel, or ammunition imported or brought into the United States or any possession thereof under the provision of this section shall be released from Customs custody upon the payment of customs duties, if applicable, and in the manner prescribed in the conditional authorization issued by the Director.

Par. 44. Section 178.121 is amended by revising paragraphs (a), (b), and (c) to read as follows:

§ 178.121 General.

(a) The records pertaining to firearms transactions prescribed by this part shall be retained on the licensed premises in the manner prescribed by this subpart and for the length of time prescribed by § 178.129. The records pertaining to ammunition prescribed by this part shall be retained on the licensed premises in the manner prescribed by § 178.125.

(b) ATF officers may, for the purposes and under the conditions prescribed in § 178.23, enter the premises of any licensed importer, licensed manufacturer, licensed dealer, or licensed collector for the purpose of examining or inspecting any record or document required by or obtained under this part. Section 923(g) of the Act requires licensed importers, licensed manufacturers, licensed dealers, and licensed collectors to make such records available for such examination or inspection during business hours as provided in § 178.23

(c) Each licensed importer, licensed manufacturer, licensed dealer, and licensed collector shall maintain such records of importation, production, shipment, receipt, sale, or other disposition, whether temporary or permanent, of firearms and such records of the disposition of ammunition as the regulations contained in this part prescribe. Section 922(m) of the Act makes it unlawful for any licensed importer, licensed manufacturer, licensed dealer, or licensed collector knowingly to make any false entry in, to fail to make appropriate entry in, or to fail to properly maintain any such record.

* * * * *

Par. 45. Section 178.122 is revised to remove ammunition records except for the disposition of armor-piercing ammunition. As revised, § 178.122 reads as follows:

§ 178.122 Records maintained by importers.

(a) Each licensed importer shall, within 15 days of the date of importation or other acquisition, record the type, model, caliber or gauge, manufacturer, country of manufacturer, and the serial number of each firearm imported or otherwise acquired, and the date such importation or other acquisition was made.

(b) A record of firearms and a separate record of armor-piercing ammunition disposed of by a licensed importer to another licensee shall be maintained by the licensed importer on the licensed premises and shall show the quantity, type, model, manufacturer, country of manufacture, caliber, size or gauge, serial number (in case of firearms only), of the firearms or armor-piercing ammunition so transferred, the name and license number of the licensee to whom the firearms or armor-piercing ammunition were transferred and the date of the transaction. The information required by this paragraph shall be entered in the proper record book not later than the seventh day following the date of the transaction, and such information shall be recorded under the following format:

IMPORTER'S DISPOSITION RECORD

Quantity	Type	Manufacturer	Country of manufacture	Caliber or gauge	Model	Serial No.	Name and license No. of licensee to whom transferred	Date of the transaction

(c) Notwithstanding the provisions of paragraph (b) of this section, the regional director (compliance) may authorize alternate records to be maintained by a licensed importer to record his disposal of firearms and armor-piercing ammunition when it is shown by the licensed importer that such alternate records will accurately and readily disclose the information required by paragraph (b) of this section. A licensed importer who proposes to use alternate records shall submit a letter application, in duplicate, to the regional director (compliance) and shall describe the proposed alternate records and the need therefor. Such alternate records shall not be employed by the licensed importer until approval in such regard is received from the regional director (compliance).

(d) Each licensed importer shall maintain separate records of the sales or other dispositions made of firearms and armor-piercing ammunition to nonlicensees. Such records shall be maintained in the form and manner as prescribed by § 178.125 in regard to armor-piercing ammunition transactions, and by § 178.124 and § 178.125 in regard to firearms transaction records and records of acquisition and disposition of firearms.

(Approved by the Office of Management and Budget under control number 1512-0387)

Par. 46. Section 178.123 is revised to remove ammunition records except for the disposition of armor-piercing ammunition. As revised, § 178.123 reads as follows:

§ 178.123 Records maintained by manufacturers.

(a) Each licensed manufacturer shall record the type, model, caliber or gauge, and serial number of each complete firearm manufactured or otherwise acquired, and the date such manufacture or other acquisition was made. The information required by this paragraph shall be recorded not later than the seventh day following the date such manufacture or other acquisition was made.

(b) A record of firearms and a separate record of armor-piercing ammunition disposed of by a licensed manufacturer to another licensee shall be maintained by the licensed manufacturer on the licensed premises and shall show the quantity, type, model, caliber, size or gauge, serial number (in the case of firearms only), of the firearms or armor-piercing ammunition so transferred, the name and license number of the licensee to whom the firearms or armor-piercing ammunition were transferred, and the date of the transaction. The information required by this paragraph shall be entered in the proper record book not later than the seventh day following the date of the transaction, and such information shall be recorded under the format prescribed by § 178.122, except that the name of the manufacturer need not be recorded if the firearm or armor-piercing ammunition is of the manufacturer's own manufacture.

(c) Notwithstanding the provisions of paragraph (b) of this section, the regional director (compliance) may authorize alternate records to be maintained by a licensed manufacturer to record the disposal of firearms and armor-piercing ammunition when it is shown by the licensed manufacturer that such alternate records will accurately and readily disclose the information required by paragraph (b) of this section. A licensed manufacturer who proposes to use alternate records shall submit a letter application, in duplicate, to the regional director (compliance) and shall describe the proposed alternate record and the need therefore. Such alternate records shall not be employed by the licensed manufacturer until approval in such regard is received from the regional director (compliance).

(d) Each licensed manufacturer shall maintain separate records of the sales or other dispositions made of firearms and armor-piercing ammunition to nonlicensees. Such records shall be maintained in the form and manner as prescribed by § 178.125 in regard to armor-piercing ammunition transactions, and by §§ 178.124 and 178.125 in regard to firearms transaction records and records of acquisition and disposition of firearms.

(Approved by the Office of Management and Budget under control number 1512-0369)

Par. 47. Section 178.124 is amended by revising paragraphs (a), (b), (c), (d), (e), (f), and (i) to read as follows:

§ 178.124 Firearms transaction record.

(a) A licensed importer, licensed manufacturer, or licensed dealer shall not sell or otherwise dispose, temporarily or permanently, of any firearm to any person, other than another licensee, unless the licensee records the transaction on a firearms transaction record, Form 4473; *Provided,* That a firearms transaction record, Form 4473, shall not be required to record the disposition made of a firearm delivered to a licensee for the sole purpose of repair or customizing when such firearm is returned to the person from whom received.

(b) A licensed manufacturer, licensed importer, or licensed dealer shall retain in alphabetical (by name of purchaser), chronological (by date of disposition), or numerical (by transaction serial number) order, and as a part of the required records, each Form 4473 obtained in the course of transferring custody of the firearms.

(c) Prior to making an over-the-counter transfer of a firearm to a nonlicensee who is a resident of the State in which the licensee's business premises is located, the licensed importer, licensed manufacturer, or licensed dealer so transferring the firearm shall obtain a Form 4473 from the transferee showing the name, address (including county or similar political subdivision), date and place of birth, height, weight, and race of the transferee, and certification by the transferee that the transferee is not prohibited by the Act from transporting or shipping a firearm in interstate or foreign commerce or receiving a firearm which has been shipped or transported in interstate or foreign commerce or possessing a firearm in or affecting commerce. The licensee shall identify the firearm to be transferred by listing in the Form 4473 the name of the manufacturer, the name of the importer (if any), the type, model, caliber or gauge, and the serial number of the firearm. Before transferring the firearm described in the Form 4473, the licensee:

(1) Shall cause the transferee to be identified in any manner customarily used in commercial transactions (e.g., a driver's license), and shall note on the form the method used; and

(2) If satisfied that the transferee is lawfully entitled to receive the firearm, shall sign and date the form.

(d) Prior to making an over-the-counter transfer of a shotgun or rifle under the provisions contained in § 178.96(c) to a nonlicensee who is not a resident of the State in which the licensee's business premises is located, the licensed dealer so transferring the shotgun or rifle, and such transferee, shall comply with the requirements of paragraph (c) of this section.

(e) Prior to making a transfer of a firearm to any nonlicensee who is not a resident of the State in which the licensee's business premises is located, and such nonlicensee is acquiring the firearm by loan or rental from the licensee for temporary use for lawful sporting purposes, the licensed importer, licensed manufacturer, or licensed dealer so furnishing the firearm, and such transferee, shall comply with the provisions of paragraph (c) of this section.

(f) Form 4473 shall be submitted, in duplicate, to a licensed importer, licensed manufacturer, or licensed dealer by a transferee who is purchasing or otherwise acquiring a firearm by other than an over-the-counter transaction, and who is a resident of the State in which the licensee's business premises is located. The Form 4473 shall show the name, address, date and place of birth, height, weight, and race of the transferee; and the title, name, and address of the principal law enforcement officer of the locality to which the firearm will be delivered. The transferee also must date and execute the sworn statement contained on the form showing that, in case the firearm to be transferred is a firearm other than a shotgun or rifle, the transferee is 21 years or more of age; that, in case the firearm to be transferred is a shotgun or rifle, the transferee is 18 years or more of age; that the transferee is not prohibited by the provisions of the Act from shipping or transporting a firearm in interstate or foreign commerce or receiving a firearm which has been shipped or transported in interstate or foreign commerce or possessing a firearm in or affecting commerce; and that the transferee's receipt of the firearm would not be in violation of any statute of the State or published ordinance applicable to the locality in which the transferee resides. Upon receipt of such Forms 4473, the licensee shall identify the firearm to be transferred by listing in the Forms 4473 the name of the manufacturer, the name of the importer (if any), the type, model, caliber or gauge, and the serial number of the firearm to be transferred. The licensee shall prior to shipment or delivery of the firearm to such transferee, forward by registered or certified mail (return receipt requested) a copy of the Form 4473 to the principal law enforcement officer named in the Form 4473 by the transferee, and shall delay shipment or delivery of the firearm to the transferee for a period of at least 7 days following receipt by the licensee of the return receipt evidencing delivery of the copy of the Form 4473 to such principal law enforcement officer, or the return of the copy of the Form 4473 to the licensee due to the refusal of such principal law enforcement officer to accept same in accordance with U.S. Postal Service regulations. The original Form 4473, and evidence of receipt or rejection of delivery of the copy of the Form 4473 sent to the principal law enforcement officer, shall be retained by the licensee as a part of the records required to be kept under this subpart.

* * * * *

(i) A licensee may obtain, upon request, an emergency supply of Forms 4473 from any regional director (compliance). For normal usage, a licensee should request a year's supply from the ATF Distribution Center, 7943 Angus Court, Springfield, Virginia 22153.

Par. 48. Section 178.125 is revised to remove ammunition records except for the disposition of armor-piercing ammunition. As revised, § 178.125 reads as follows:

§ 178.125 Record of receipt and disposition.

(a) *Armor-piercing ammunition sales to nonlicensees.* The sale or other disposition of armor-piercing ammunition by licensed dealers and licensed collectors shall be recorded in a bound record at the time a transaction is made. The bound record shall be maintained in chronological order by date of sale or disposition of the armor-piercing ammunition, and shall be retained on the licensed permises of the licensee for a period not less than two years following the date of the recorded sale or disposition of the armor-piercing ammunition.

(1) The bound record entry shall show:

(i) The date of the transaction;

(ii) The name of the manufacturer;

(iii) The caliber or gauge (or the type or armor-piercing ammunition component);

(iv) The quantity of armor-piercing ammunition (or component);

(v) The name, address, and date of birth of the nonlicensee; and

(vi) The method used to establish the identity of the armor-piercing ammunition purchaser.

(2) The format required for the bound record is as follows:

DISPOSITION RECORD OF ARMOR-PIERCING AMMUNITION

Date	Manufacturer	Caliber, gauge, or type of component	No. of boxes	Purchaser		Enter an (x) in the "known" column if purchaser is personally known to you. Otherwise, establish the purchaser's identification		
				Name and address	Date of birth	Known	Driver's license	Other type (specify)

However, when a commercial record is made at the time a transaction is made, a licensee may delay making an entry into the bound record if the provisions of paragraph (c) of this section are complied with.

(b) *Armor-piercing ammunition sales to licensees.* Sales or other dispositions of armor-piercing ammunition from a licensee to another licensee shall be recorded and maintained in the manner prescribed in § 178.122(b) for importers.

(c) *Commercial records of armor-piercing ammunition transactions.* When a commercial record is made at the time of sale or other disposition of armor-piercing ammunition, and such record contains all information required by the bound record prescribed by paragraph (a) of this section, the licensed dealer or licensed collector transferring the armor-piercing ammunition may, for a period not exceeding 7 days following the date of such transfer, delay making the required entry into such bound record; *Provided*, That the commercial record pertaining to the transfer is: (1) Maintained by the licensed dealer or licensed collector separate from other commercial documents maintained by such licensee, and (2) is readily available for inspection on the licensed premises until such time as the required entry into the bound record is made.

(d) *Firearms receipt and disposition by dealers.* Each licensed dealer shall enter into a record each receipt and disposition of firearms. In addition, before commencing or continuing firearms business, each licensed dealer shall inventory the firearms possessed for such business and shall record same in the record required by this paragraph. The record required by this paragraph shall be maintained in bound form under the format prescribed below. The purchase or other acquisition of a firearm by a licensed dealer shall, except as provided in paragraph (f) of this section, be recorded not later than the close of the next business day following the date of such purchase or acquisition. The record shall show the date of receipt, the name and address or the name and license number of the person from whom received, the name of the manufacturer and importer (if any), the model, serial number, type of action, and the caliber or gauge of the firearm. The sale or other disposition of a firearm shall be recorded by the licensed dealer not later than 7 days following the date of such transaction. When such disposition is made to a nonlicensee, the firearms transaction record, Form 4473, obtained by the licensed dealer shall be retained, until the transaction is recorded, separate from the licensee's Form 4473 file and be readily available for inspection. When such disposition is made to a licensee, the commercial record of the transaction shall be retained, until the transaction is recorded, separate from other commercial documents maintained by the licensed dealer, and be readily available for inspection. The record shall show the date of the sale or other disposition of each firearm, the name and address of the person to whom the firearm is transferred, or the name and license number of the person to whom transferred if such person is a licensee, or the firearms transaction record, Form 4473, serial number if the licensed dealer transferring the firearm serially numbers the Forms 4473 and files them numerically. The format required for the record of receipt and disposition of firearms is as follows:

FIREARMS ACQUISITION AND DISPOSITION RECORD

Description of firearm					Receipt		Disposition		
Manufacturer and/or importer	Model	Serial No.	Type of action	Caliber or gauge	Date	Name and address or name and license No.	Date	Name	Address or license No. if licensee, or Form 4473 Serial No. if Forms 4473 filed numerically

(e) *Firearms receipt and disposition by licensed collectors.* Each licensed collector shall enter into a record each receipt and disposition of firearms curios or relics. In addition, before commencing or continuing a firearms curio or relic collection, each licensed collector shall inventory the curios or relics possessed in such collection and shall record same in the record required by this paragraph. The record required by this paragraph shall be maintained in bound form under the format prescribed below. The purchase or other acquisition of a curio or relic shall, except as provided in paragraph (f) of this section, be recorded not later than the close of the next business day following the date of such purchase or other acquisition. The record shall show the date of receipt, the name and address or the name and license number of the person from whom received, the name of the manufacturer and importer (if any), the model, serial number, type of action, and the caliber or gauge of the firearm curio or relic. The sale or other disposition of a curio or relic shall be recorded by the licensed collector not later than 7 days following the date of such transaction. When such disposition is made to a licensee, the commercial record of the transaction shall be retained, until the transaction is recorded, separate from other commercial documents maintained by the licensee, and be readily available for inspection. The record shall show the date of the sale or other disposition of each firearm curio or relic, the name and address of the person to whom the firearm curio or relic is transferred, or the name and license number of the person to whom transferred if such person is a licensee, and the date of birth of the transferee if other than a licensee. In addition, the licensee shall cause the transferee, if other than a licensee, to be identified in any manner customarily used in commercial transactions (e.g., a driver's license), and shall note on the record the method used.

FIREARMS COLLECTORS ACQUISITION AND DISPOSITION RECORD

Description of firearm					Receipt		Disposition			
Manufacturer and/or importer	Model	Serial No.	Type of action	Caliber or gauge	Date	Name and address or name and license No.	Date	Name and address or name and license No.	Date of birth if nonlicensee	Driver's license No. or other identification if nonlicensee

(f) *Commercial records of firearms received.* When a commercial record is held by a licensed dealer or licensed collector showing the acquisition of a firearm or firearm curio or relic, and such record contains all acquisition information required by the bound record prescribed by paragraphs (d) and (e) of this section, the licensed dealer or licensed collector acquiring such firearm or curio or relic, may, for a period not exceeding 7 days following the date of such acquisition, delay making the required entry into such bound record: *Provided,* That the commercial record is, until such time as the required entry into the bound record is made: (1) Maintained by the licensed dealer or licensed collector separate from other commercial documents maintained by such licensee, and (2) readily available for inspection on the licensed premises: *Provided, further,* That when disposition is made of a firearm or firearm curio or relic not entered in the bound record under the provisions of this paragraph, the licensed dealer or licensed collector making such disposition shall enter all required acquisition information regarding the firearm or firearm curio or relic in the bound record at the time such transfer or disposition is made.

(g) *Alternate records.* Notwithstanding the provisions of paragraphs (a), (d), and (e) of this section, the regional director (compliance) may authorize alternate records to be maintained by a licensed dealer or licensed collector to record the acquisition and disposition of firearms or curios or relics and the disposition of armor-piercing ammunition when it is shown by the licensed dealer or the licensed collector that such alternate records will accurately and readily disclose the required information. A licensed dealer or licensed collector who proposes to use alternate records shall submit a letter application, in duplicate, to the regional director (compliance) and shall describe the proposed alternate records and the need therefor. Such alternate records shall not be employed by the licensed dealer or licensed collector until approval in such regard is received from the regional director (compliance).

(h) *Requirements for importers and manufacturers.* Each licensed importer and licensed manufacturer selling or otherwise disposing of firearms or armor-piercing ammunition to nonlicensees shall maintain such records of such transactions as are required of licensed dealers by this section.

(Approved by the Office of Management and Budget under control number 1512-0387)

Par. 49. Section 178.125a is added to provide for the disposition of a licensee's personal firearms collection. As added, § 178.125a reads as follows:

§ 178.125a Personal firearms collection.

(a) Notwithstanding any other provision of this subpart, a licensed manufacturer, licensed importer, or licensed dealer is not required to record on a firearms transaction record, Form 4473, the sale or other disposition of a firearm maintained as part of the licensee's personal firearms collection: *Provided*, That:

(1) The licensee has maintained the firearm as part of such collection for 1 year from the date the firearm was transferred from the business inventory into the personal collection or otherwise acquired as a personal firearm;

(2) The licensee recorded in the bound record prescribed by § 178.125(d) the receipt of the firearm into the business inventory or other acquisition;

(3) The licensee recorded the firearm as a disposition in the bound record prescribed by § 178.125(d) when the firearm was transferred from the business inventory into the personal firearms collection or otherwise acquired as a personal firearm; and

(4) The licensee enters the sale or other disposition of the firearm from the personal firearms collection into a bound record, under the format prescribed below, identifying the firearm transferred by recording the name of the manufacturer and importer (if any), the model, serial number, type of action, and the caliber or gauge, and showing the date of the sale or other disposition, the name and address of the transferee, or the name and license number of the transferee if such person is a licensee, the date of birth of the transferee if other than a licensee. In addition, the licensee shall cause the transferee, if other than a licensee, to be identified in any manner customarily used in commercial transactions (e.g., a drivers license), and shall note on the record the method used. The format required for the disposition record of personal firearms is as follows:

DISPOSITION RECORD OF PERSONAL FIREARMS

Description of firearm					Disposition			
Manufacturer and/or importer	Model	Serial No.	Type of action	Caliber or gauge	Date	Name and address or name and license No.	Date of birth if nonlicensee	Driver's license No. or other identification if nonlicensee

(b) Any licensed manufacturer, licensed importer, or licensed dealer selling or otherwise disposing of a firearm from the licensee's personal firearms collection under this section shall be subject to the restrictions imposed by the Act and this part on the dispositions of firearms by persons other than licensed manufacturers, licensed importers, and licensed dealers.

(Approved by the Office of Management and Budget under control number 1512-0387)

Par. 50. Section 178.127 is revised to change the location where the firearms and ammunition records of a discontinued business are to be sent. As revised, § 178.127 reads as follows:

§ 178.127 Discontinuance of business.

Where a firearms or ammunition business is discontinued and succeeded by a new licensee, the records prescribed by this subpart shall appropriately reflect such facts and shall be delivered to the successor. Where discontinuance of the business is absolute, the records prescribed by this subpart shall be delivered within 30 days following the business discontinuance to the ATF Firearms Records Repository, 7943 Angus Court, Springfield, Virginia 22153; *Provided, however,* Where State law or local ordinance requires the delivery of records to other responsible authority, the regional director (compliance) may arrange for the delivery of the records required by this subpart to such authority.

Par. 51. Section 178.128 is revised to reflect a change in the penalties for false statements or representations of licensees in their records. As revised, § 178.128 reads as follows:

§ 178.128 False statement or representation.

(a) Any person who knowingly makes any false statement or representation in applying for any license or exemption or relief from disability, under the provisions of the Act, shall be fined not more than $5,000 or imprisoned not more than 5 years, or both.

(b) Any person other than a licensed manufacturer, licensed importer, licensed dealer, or licensed collector who knowingly makes any false statement or representation with respect to any information required by the provisions of the Act or this part to be kept in the records of a person licensed under the Act or this part shall be fined not more than $5,000 or imprisoned not more than 5 years, or both.

(c) Any licensed manufacturer, licensed importer, licensed dealer, or licensed collector who makes any false statement or representation with respect to any information required by the provisions of the Act or this part to be kept in the records of a person licensed under the Act or this part shall be fined not more than $1,000 or imprisoned not more than 1 year, or both.

Par. 52. Section 178.141(d) is revised to add the word "possession". As revised, § 178.141(d) reads as follows:

§ 178.141 General.

* * * * *

(d) The transportation, shipment, receipt, possession, or importation of any antique firearm.

Par. 53. Section 178.142 is revised to state the effect of State pardons and other proceedings on the Federal firearms disabilities of convicted persons. As revised, § 178.142 reads as follows:

§ 178.142 Effect of pardons and expunctions of convictions.

(a) A pardon granted by the President of the United States regarding a Federal conviction for a crime punishable by imprisonment for a term exceeding 1 year shall remove any disability which otherwise would be imposed by the provisions of this part with respect to that conviction.

(b) A pardon granted by the Governor of a State or other State pardoning authority with respect to a conviction, or any expunction, reversal or setting aside of a conviction or other proceeding rendering a conviction nugatory shall remove any disability which otherwise would be imposed by the provisions of this part with respect to the conviction, unless:

(1) The pardon, expunction, setting aside, or other proceeding expressly provides that the person may not ship, transport, possess or receive firearms; or

(2) The pardon, expunction, setting aside, or other proceeding did not fully restore the rights of the person to ship, transport, possess or receive firearms under the law of the jurisdiction where

the pardon, expunction, setting aside or other proceeding occurred.

Par. 54. Section 178.144 is revised to allow applications for relief from any Federal firearms disabilities and prescribe procedures to be followed. As revised, § 178.144 reads as follows:

§ 178.144 Relief from disabilities under the Act.

(a) Any person may make application for relief from the disabilities under section 922(g) and (n) of the Act (see § 178.32).

(b) An application for such relief shall be filed, in triplicate, with the Director. It shall include the information required by this section and such other supporting data as the Director and the applicant deem appropriate.

(c) Any record or document of a court or other government entity or official required by this paragraph to be furnished by an applicant in support of an application for relief shall be certified by the court or other government entity or official as a true copy. An application shall include:

(1) In the case of an applicant who is an individual, a written statement from each of 3 references, who are not related to the applicant by blood or marriage and have known the applicant for at least 3 years, recommending the granting of relief;

(2) Written consent to examine and obtain copies of records and to receive statements and information regarding the applicant's background, including records, statements and other information concerning employment, medical history, military service, and criminal record;

(3) In the case of an applicant under indictment, a copy of the indictment or information;

(4) In the case of an applicant having been convicted of a crime punishable by imprisonment for a term exceeding 1 year, a copy of the indictment or information on which the applicant was convicted, the judgment of conviction or record of any plea of nolo contendere or plea of guilty or finding of guilt by the court, and any pardon, expunction, setting aside or other record purporting to show that the conviction was rendered nugatory;

(5) In the case of an applicant who has been adjudicated a mental defective or committed to a mental institution, a copy of the order of a court, board, commission, or other lawful authority that made the adjudication or ordered the commitment, any petition that sought to have the applicant so adjudicated or committed, any medical records reflecting the reasons for commitment and diagnoses of the applicant, and any court order or finding of a court, board, commission, or other lawful authority showing the applicant's discharge from commitment, restoration of mental competency and the restoration of rights;

(6) In the case of an applicant who has been discharged from the Armed Forces under dishonorable conditions, a copy of the applicant's summary of service record (Department of Defense Form 214), charge sheet (Department of Defense Form 458), and final court martial order; and

(7) In the case of an applicant who, having been a citizen of the United States, has renounced his or her citizenship, a copy of the formal renunciation of nationality before a diplomatic or consular officer of the United States in a foreign State or before an officer designated by the Attorney General when the United States was in a state of war (see 8 U.S.C. 1481(a)(5) and (6)).

(d) The Director may grant relief to an applicant if it is established to the satisfaction of the Director that the circumstances regarding the disability, and the applicant's record and reputation, are such that the applicant will not be likely to act in a manner dangerous to public safety, and that the granting of the relief would not be contrary to the public interest.

(e) In addition to meeting the requirements of paragraph (d) of this section, an applicant who has been adjudicated a mental defective or committed to a mental institution will not be granted relief unless the applicant was subsequently determined by a court, board, commission, or other lawful authority to have been restored to mental competency, to be no longer suffering from a mental disorder, and to have had all rights restored.

(f) Upon receipt, of an incomplete or improperly executed application for relief, the applicant shall be notified of the deficiency in the application. If the application is not corrected and returned within 30 days following the date of notification, the application shall be considered as having been abandoned.

(g) Whenever the Director grants relief to any person pursuant to this section, a notice of such action shall be promptly published in the **Federal Register,** together with the reasons therefor.

(h) A person who has been granted relief under this section shall be relieved of any disabilities imposed by the Act with respect to the acquisition, receipt, transfer, shipment, transportation, or possession of firearms or ammunition and incurred by reason of such disability.

(i)(1) A licensee who is convicted of a crime punishable by imprisonment for a term exceeding 1 year during the term of a current license or while the licensee has pending a license renewal application, and who files an application for removal of disabilities resulting from such conviction, shall not be barred from licensed operations for 30 days after the date upon which the conviction becomes final, and if the licensee files the application for relief as provided by this section within such 30-day period, the licensee may further continue licensed operations during the pendency of the application. A licensee who does not file such application within 30 days from the date the conviction becomes final shall not continue licensed operations beyond 30 days from the date the conviction becomes final.

(2) In the event the term of a license of a person expires during the 30-day period following the date upon which the conviction becomes final or during the pendency of the application for relief, a timely application for renewal of the license must be filed in order to continue licensed operations. Such license application shall show that the applicant has been convicted of a crime punishable by imprisonment for a term exceeding 1 year.

(3) A licensee shall not continue licensed operations beyond 30 days following the date the Director issues notification that the licensee's application for removal of disabilities resulting from a conviction has been denied.

(4) When as provided in this section a licensee may no longer continue licensed operations, any application for renewal of license filed by the licensee during the term of the indictment or the pendency of the application for removal of disabilities resulting from such conviction, shall be denied by the regional director (compliance).

Par. 55. Section 178.145 is revised to make a conforming change. As revised, § 178.145 reads as follows:

§ 178.145 Research organizations.

The provisions of § 178.98 with respect to the sale or delivery of destructive devices, machine guns, short-barreled shotguns, and short-barreled rifles shall not apply to the sale or delivery of such devices and weapons to any research organization designated by the Director to receive same. A research organization desiring such designation shall submit a letter application, in duplicate, to the Director. Such application shall contain the name and address of the research organization, the names and addresses of the persons directing or controlling, directly or indirectly, the policies and management of such organization, the nature and purpose of the research being conducted, a description of the devices and weapons to be received, and the identity of the person or persons from whom such devices and weapons are to be received.

Par. 56: Section 178.147 is revised to clarify provisions for licensees returning a firearm to a nonlicensee. As revised, § 178.147 reads as follows:

§ 178.147 Return of firearm.

A person not otherwise prohibited by Federal, State or local law may ship a firearm to a licensed importer, licensed manufacturer, or licensed dealer for any lawful purpose, and, notwithstanding any other provision of this part, the licensed manufacturer, licensed importer, or licensed dealer may return in interstate or foreign commerce to that person the firearm or a replacement firearm of the same kind and type. A person not otherwise prohibited by Federal, State or local law may ship a firearm curio or relic to a licensed collector for any lawful purpose, and, notwithstanding any other provision of this part, the licensed collector may return in interstate or foreign commerce to that person the firearm curio or relic.

Par. 57. Section 178.148 is removed and a new § 178.148 is inserted to reflect the provisions for exempting certain armor-piercing ammunition from regulation. As added, new § 178.148 reads as follows:

§ 178.148 Armor-piercing ammunition intended for sporting or industrial purposes.

The Director may exempt certain armor-piercing ammunition from the recordkeeping requirements of this part. A person who desires to obtain an exemption under this section for any such ammunition which is primarily intended for sporting purposes or intended for industrial purposes shall submit a written request to the Director. Each request shall be executed under the penalties of perjury and contain a complete and accurate description of the ammunition, the name and address of the manufacturer or importer, the purpose of and use for which it is designed and intended, and any photographs, diagrams, or drawings as may be necessary to enable the Director to make a determination. The Director may require that a sample of the ammunition be submitted for examination and evaluation.

Par. 58. Section 178.149 is revised to reflect changes in the seizure and forfeiture provisions. As revised, § 178.149 reads as follows:

§ 178.149 Seizure and forfeiture.

(a) Any firearm or ammunition involved in or used in any knowing violation of subsections (a)(4), (a)(6), (f), (g), (h), (i), (j), or (k) of section 922 of the Act, or knowing importation or bringing into the United States or any possession thereof any firearm or ammunition in violation of section 922(l) of the Act, or knowing violation of section 924 of the Act, or willful violation of any other provision of the Act or of this part, or any violation of any other criminal law of the United States, or any firearm or ammunition intended to be used in any offense referred to in paragraph (c) of this section, where such intent is demonstrated by clear and convincing evidence, shall be subject to seizure and forfeiture, and all provisions of the Internal Revenue Code of 1954 relating to the seizure, forfeiture, and disposition of firearms, as defined in section 5845(a) of that Code, shall, so far as applicable, extend to seizures and forfeitures under the provisions of the Act: *Provided,* That upon acquittal of the owner or possessor, or dismissal of the charges against such person other than upon motion of the Government prior to trial, the seized firearms or ammunition shall be returned forthwith to the owner or possessor or to a person delegated by the owner or possessor unless the return of the firearms or ammunition would place the owner or possessor or the delegate of the owner or possessor in violation of law. Any action or proceeding for the forfeiture of firearms or ammunition shall be commenced within 120 days of such seizure.

(b) Only those firearms or quantities of ammunition particularly named and individually identified as involved in or used in any violation of the provisions of the Act or this part, or any other criminal law of the United States or as intended to be used in any offense referred to in paragraph (c) of this section, where such intent is demonstrated by clear and convincing evidence, shall be subject to seizure, forfeiture and disposition.

(c) The offenses referred to in paragraphs (a) and (b) of this section for which firearms and ammunition intended to be used in such offenses are subject to seizure and forfeiture are:

(1) Any crime of violence, as that term is defined in section 924(c)(3) of the Act;

(2) Any offense punishable under the Controlled Substances Act (21 U.S.C. 801 et seq.) or the Controlled Substances Import and Export Act (21 U.S.C. 951 et seq.);

(3) Any offense described in section 922(a)(1), 922(a)(3), 922(a)(5), or 922(b)(3) of the Act, where the firearm or ammunition intended to be used in such offense is involved in a pattern of activities which includes a violation of any offense described in section 922(a)(1), 922(a)(3), 922(a)(5), or 922(b)(3) of the Act;

(4) Any offense described in section 922(d) of the Act where the firearm or ammunition is intended to be used in such offense by the transferor of such firearm or ammunition;

(5) Any offense described in section 922(i), 922(j), 922(l), 922(n), or 924(b) of the Act; and

(6) Any offense which may be prosecuted in a court of the United States which involves the exportation of firearms or ammunition.

Par. 59. Section 178.171 is revised to correct a citation and to limit ammunition recordkeeping to armor-piercing ammunition. As revised, § 178.171 reads as follows:

§ 178.171 Exportation.

Firearms and ammunition shall be exported in accordance with the applicable provisions of section 38 of the Arms Export Control Act (22 U.S.C. 2778) and regulations thereunder. However, licensed manufacturers, licensed importers, and licensed dealers exporting firearms and armor-piercing ammunition shall maintain records showing the manufacture or acquisition of the firearms as required by this part and records showing the name and address of the foreign consignee of the firearms and armor-piercing ammunition and the date the firearms and armor-piercing ammunition were exported.

PART 179 — [AMENDED]

Par. 60. The authority citation for Part 179 continues to read as follows:

Authority; 26 U.S.C. 7805.

Par. 61. The table of contents to 27 CFR Part 179 is amended to add § 179.26 to Subpart C and § 179.105 to Subpart G and an undesignated center heading preceeding § 179.105 and by revising §§ 179.161 and 179.193 and the undesignated center heading preceeding § 179.122 to read as follows:

PART 179 — MACHINE GUNS, DESTRUCTIVE DEVICES, AND CERTAIN OTHER FIREARMS

* * * * *

Sec. 179.26 Alternate methods or procedures; emergency variations from requirements.

* * * * *

Machine Guns

179.105 Transfer and possession of machine guns.

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Arms Export Control Act

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179.161 National Firearms Act stamps.

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179.193 Arms Export Control Act.

Par. 62. Section 179.11 is amended by revising "Machine gun" and "Muffler or silencer" to read as follows:

§ 179.11 Meaning of terms.

* * * * *

Machine gun. Any weapon which shoots, is designed to shoot, or can be readily restored to shoot, automatically more than one shot, without manual reloading, by a single function of the trigger. The term shall also include the frame or receiver of any such weapon, any part designed and intended solely and exclusively, or combination of parts designed and intended, for use in converting a weapon into a machine gun, and any combination of parts from which a machine gun can be assembled if such parts are in the possession or under the control of a person.

* * * * *

Muffler or silencer. Any device for silencing, muffling, or diminishing the report of a portable firearm, including any combination of parts, designed or redesigned, and intended for the use in assembling or fabricating a firearm silencer or firearm muffler, and any part intended only for use in such assembly or fabrication.

* * * * *

Par. 63. Section 179.21 is revised to change the address at which ATF forms may be obtained. As revised, § 179.21(c) reads as follows:

§ 179.21 Forms prescribed.

* * * * *

(c) Requests for forms should be mailed to the ATF Distribution Center, 7943 Angus Court, Springfield, Virginia 22153.

* * * * *

Par. 64. Section 179.26 is added to allow alternate methods and procedures and emergency variations from requirements. As added, § 179.26 reads as follows:

§ 179.26 Alternate methods or procedures; emergency variations from requirements.

(a) *Alternate methods or procedures.* Any person subject to the provisions of this part, on specific approval by the Director as provided in this paragraph, may use an alternate method or procedure in lieu of a method or procedure specifically prescribed in this part. The Director may approve an alternate method or procedure, subject to stated conditions, when it is found that:

(1) Good cause is shown for the use of the alternate method or procedure;

(2) The alternate method or procedure is within the purpose of, and consistent with the effect intended by, the specifically prescribed method or procedure and that the alternate method or procedure is substantially equivalent to that specifically prescribed method or procedure; and

(3) alternate method or procedure will not be contrary to any provision of law and will not result in an increase in cost to the Government or hinder the effective administration of this part. Where such person desires to employ an alternate method or procedure, a written application shall be submitted to the appropriate regional director

(compliance), for transmittal to the Director. The application shall specifically describe the proposed alternate method or procedure and shall set forth the reasons for it. Alternate methods or procedures may not be employed until the application is approved by the Director. Such person shall, during the period of authorization of an alternate method or procedure, comply with the terms of the approved application. Authorization of any alternate method or procedure may be withdrawn whenever, in the judgment of the Director, the effective administration of this part is hindered by the continuation of the authorization.

(b) *Emergency variations from requirements.* The Director may approve a method of operation other than as specified in this part, where it is found that an emergency exists and the proposed variation from the specified requirements are necessary and the proposed variations (1) will not hinder the effective administration of this part, and (2) will not be contrary to any provisions of law. Variations from requirements granted under this paragraph are conditioned on compliance with the procedures, conditions, and limitations set forth in the approval of the application. Failure to comply in good faith with the procedures, conditions, and limitations shall automatically terminate the authority for the variations, and the person granted the variance shall fully comply with the prescribed requirements of regulations from which the variations were authorized. Authority for any variation may be withdrawn whenever, in the judgment of the Director, the effective administration of this part is hindered by the continuation of the variation. Where a person desires to employ an emergency variation, a written application shall be submitted to the appropriate regional director (compliance) for transmittal to the Director. The application shall describe the proposed variation and set forth the reasons for it. Variations may not be employed until the application is approved.

(c) *Retention of approved variations.* The person granted the variance shall retain and make available for examination by ATF officers any application approved by the Director under this section.

Par. 65. Section 179.61 is revised to show that the Director maintains the stamps pertaining to payment of the making tax. As revised, § 179.61 reads as follows:

§ 179.61 Rate of tax.

Except as provided in this subpart, there shall be levied, collected, and paid upon the making of a firearm a tax at the rate of $200 for each firearm made. This tax shall be paid by the person making the firearm. Payment of the tax on the making of a firearm shall be represented by a $200 adhesive stamp bearing the words "National Firearms Act." The stamps are maintained by the Director.

Par. 66. Section 179.62 is revised to change the procedures in applying to make a firearm. As revised, § 179.62 reads as follows:

§ 179.62 Application to make.

No person shall make a firearm unless he has filed with the Director a written application on Form 1 (Firearms), Application to Make and Register a Firearm, in duplicate, executed under the penalties of perjury, to make and register the firearm and has received the approval of the Director to make the firearm which approval shall effectuate registration of the weapon to the applicant. The application shall identify the firearm to be made by serial number, type, model, caliber or gauge, length of barrel, other marks of identification, and the name and address of original manufacturer (if the applicant is not the original manufacturer). The applicant must be identified on the

Form 1 (Firearms) by name and address and, if other than a natural person, the name and address of the principal officer or authorized representative and the employer identification number and, if an individual, the identification must include the date and place of birth and the social security number of the applicant and the information prescribed in § 179.63. Each applicant shall identify the Federal firearms license and special (occupational) tax stamp issued to the applicant, if any. The applicant shall also show required information evidencing that his making or possession of the firearm would not be in violation of law. Further, the applicant shall show why he intends to make the firearm. If the making is taxable, a remittance in the amount of $200 shall be submitted with the application in accordance with the instructions on the form. If the making is taxable and the application is approved, the Director will affix a National Firearms Act stamp to the original application in the space provided therefor and properly cancel the stamp (see § 179.67). The approved application will be returned to the applicant. If the making of the firearm is tax exempt under this part, an explanation of the basis of the exemption shall be attached to the Form 1 (Firearms).

Par. 67. Section 179.63 is revised to change the procedures in identifying an applicant making a firearm. As revised, § 179.63 reads as follows:

§ 179.63 Identification of applicant.

If the applicant is an individual, the applicant shall securely attach to each copy of the Form 1 (Firearms), in the space provided on the form, a photograph of the applicant 2 X 2 inches in size, clearly showing a full front view of the features of the applicant with head bare, with the distance from the top of the head to the point of the chin approximately 1¼ inches, and which shall have been taken within 1 year prior to the date of the application. The applicant shall attach two properly completed FBI Forms FD-258 (Fingerprint Card) to the application. The fingerprints must be clear for accurate classification and should be taken by someone properly equipped to take them. A certificate of the local chief of police, sheriff of the county, head of the State police, State or local district attorney or prosecutor, or such other person whose certificate may in a particular case be acceptable to the Director, shall be completed on each copy of the Form 1 (Firearms). The certificate shall state that the certifying official is satisfied that the fingerprints and photograph accompanying the application are those of the applicant and that the certifying official has no information indicating that possession of the firearm by the maker would be in violation of State or local law or that the maker will use the firearm for other than lawful purposes.

Par. 68. Section 179.64 is revised to change the procedures in approving an application to make a firearm. As revised, § 179.64 reads as follows:

§ 179.64 Procedure for approval of application.

The application to make a firearm, Form 1 (Firearms), must be forwarded directly, in duplicate, by the maker of the firearm to the Director in accordance with the instructions on the form. The Director will consider the application for approval or disapproval. If the application is approved, the Director will return the original thereof to the maker of the firearm and retain the duplicate. Upon receipt of the approved application, the maker is authorized to make the firearm described therein. The maker of the firearm shall not, under any circumstances, make the firearm until the application, satisfactorily executed, has been forwarded to the Director and has been approved and returned by the Director with the "National Firearms Act" stamp affixed. If the application is disapproved, the original Form 1 (Firearms) and the remittance submitted by the applicant for the purchase of the stamp will be returned to the applicant with the reason for disapproval stated on the form.

Par. 69. Section 179.84 is amended to add a sentence at the end of the section to read as follows:

§ 179.84 Application to transfer.

* * * Any tax payable on the transfer is represented by an adhesive stamp of proper denomination being affixed to the application, Form 4 (Firearms), properly cancelled.

Par. 70. Section 179.85 is revised to change the procedures in identifying an applicant transferring a firearm. As revised, § 179.85 reads as follows:

§ 179.85 Identification of transferee.

If the transferee is an individual, such person shall securely attach to each copy of the application, Form 4 (Firearms), in the space provided on the form, a photograph of the applicant 2 X 2 inches in size, clearly showing a full front view of the features of the applicant with head bare, with the distance from the top of the head to the point of the chin approximately 1¼ inches, and which shall have been taken within 1 year prior to the date of the application. The transferee shall attach two properly completed FBI Forms FD-258 (Fingerprint Card) to the application. The fingerprints must be clear for accurate classification and should be taken by someone properly equipped to take them. A certificate of the local chief of police, sheriff of the county, head of the State police, State or local district attorney or prosecutor, or such other person whose certificate may in a particular case be acceptable to the Director, shall be completed on each copy of the Form 4 (Firearms). The certificate shall state that the certifying official is satisfied that the fingerprints and photograph accompanying the application are those of the applicant and that the certifying official has no information indicating that the receipt or possession of the firearm would place the transferee in violation of State or local law or that the transferee will use the firearm for other than lawful purposes.

Par. 71. Section 179.86 is revised to change a procedure in processing an application for the transfer of a firearm. As revised, § 179.86 reads as follows:

§ 179.86 Action on application.

The Director will consider a completed and properly executed application, Form 4 (Firearms), to transfer a firearm. If the application is approved, the Director will affix the appropriate National Firearms Act stamp, cancel it, and return the original application showing approval to the transferor who may then transfer the firearm to the transferee along with the approved application. The approval of an application, Form 4 (Firearms), by the Director will effectuate registration of the firearm to the transferee. The transferee shall not take possession of a firearm until the application, Form 4 (Firearms), for the transfer filed by the transferor has been approved by the Director and registration of the firearm is effectuated to the transferee. The transferee shall retain the approved application as proof that the firearm described therein is registered to the transferee, and shall make the approved Form 4 (Firearms) available to any ATF officer on request. If the application, Form 4 (Firearms), to transfer a firearm is disapproved by the Director, the original application and the remittance for purchase of the stamp will be returned to the transferor with reasons for the disapproval stated on the application. An application, Form 4 (Firearms), to transfer a firearm shall be denied if the transfer, receipt, or possession of a firearm would place the transferee in violation of law.

Par. 72. Section 179.90 (a) and (b) are revised to show that the transfer of a firearm to or from governmental entities is exempt from the transfer tax. As revised, § 179.90 (a) and (b) read as follows:

§ 179.90 Certain government entities.

(a) A firearm may be transferred without payment of the transfer tax to or from any State, possession of the United States, any political subdivision thereof, or any official police organization of such a governmental entity engaged in criminal investigations.

(b) The exemption provided in paragraph (a) of this section shall be obtained by the transferor of the firearm filing with the Director an application, Form 5 (Firearms), Application for Tax-exempt Transfer and Registration of Firearm, in duplicate, executed under the penalties of perjury. The application shall:

(1) Show the name and address of the transferor and of the transferee;

(2) Identify the Federal firearms license and special (occupational) tax stamp, if any, of the transferor and of the transferee;

(3) Show the name and address of the manufacturer and the importer of the firearm, if known;

(4) Show the type, model, overall length (if applicable), length of barrel, caliber, gauge or size, serial number, and other marks of identification of the firearm; and

(5) Contain a statement by the transferor that the transferor is entitled to the exemption because either the transferor or the transferee is a governmental entity coming within the purview of paragraph (a) of this section. In the case of a transfer of a firearm by a governmental entity to a transferee who is a natural person not qualified as a manufacturer, importer, or dealer under this part, the transferee shall be further identified in the manner prescribed in § 179.85. If the Director approves an application, Form 5 (Firearms), the original Form 5 (Firearms) shall be returned to the transferor with the approval noted thereon. Approval of an application, Form 5 (Firearms), by the Director shall effectuate the registration of that firearm to the transferee. Upon receipt of the approved Form 5 (Firearms), the transferor shall deliver same with the firearm to the transferee. The transferor shall not transfer the firearm to the transferee until the application, Form 5 (Firearms), has been approved by the Director and the original thereof has been returned to the transferor. If the Director disapproves the application, Form 5 (Firearms), the original Form 5 (Firearms) shall be returned to the transferor with the reasons for the disapproval stated thereon. An application by a governmental entity to transfer a firearm shall be denied if the transfer, receipt, or possession of a firearm would place the transferee in violation of law.

* * * * *

Par. 73. Section 179.92 is revised to change Regional director (compliance) to Director. As revised, § 179.92 reads as follows:

§ 179.92 Transportation of firearms to effect transfer.

Notwithstanding any provision of § 178.28 of this chapter, it shall not be required that authorization be obtained from the Director for the transportation in interstate or foreign commerce of a firearm in order to effect the transfer of a firearm authorized under the provisions of this subpart.

Par. 74. Section 179.102 is revised to add certain firearm parts to the last sentence of the section. As revised, the last sentence of § 179.102 reads as follows:

§ 179.102 Identification of firearms.

* * *. A firearm frame or receiver or any other part defined as a machine gun or a muffler or silencer for the purposes of this part which is not a component part of a complete weapon at the time it is sold, shipped, or otherwise disposed of by a manufacturer, importer, or maker shall be identified as required by this section.

Par. 75. Section 179.104 is amended to add a sentence at the end of the section concerning restrictions imposed on transfers of firearms by Governmental entities, to read as follows:

§ 179.104 Registration of firearm by certain governmental entities.

* * *. The registration of any firearm under this section is for official use only and a subsequent transfer will be approved only to other governmental entities for official use.

Par. 76. Section 179.105 is added to prescribe procedures relating to machine guns. Section 179.105 and an undesignated center heading preceeding it are added to read as follows:

Machine Guns

§ 179.105 Transfer and possession of machine guns.

(a) *General.* As provided by 26 U.S.C. 5812 and 26 U.S.C. 5822, an application to make or transfer a firearm shall be denied if the making, transfer, receipt, or possession of the firearm would place the maker or transferee in violation of law. Section 922(o), Title 18, U.S.C., makes it unlawful for any person to transfer or possess a machine gun, except a transfer to or by, or possession by or under the authority of, the United States or any department or agency thereof or a State, or a department, agency, or political subdivision thereof; or any lawful transfer or lawful possession of a machine gun that was lawfully possessed before May 19, 1986. Therefore, notwithstanding any other provision of this part, no application to make, transfer, or import a machine gun will be approved except as provided by thi section.

(b) *Machine guns lawfully possesse prior to May 19, 1986.* A machine gu possessed in compliance with the provisions of this part prior to May 19, 1986 may continue to be lawfully possesse by the person to whom the machine gu is registered and may, upon complianc with the provisions of this part, b lawfully transferred to and possessed b the transferee.

(c) *Importation and manufactur* Subject to compliance with the provisions of this part, importers and manufacturers qualified under this part ma import and manufacture machine gun on or after May 19, 1986, for sale o distribution to any department o agency of the United States or any Stat or political subdivision thereof, or fo use by dealers qualified under this par as sales samples as provided in paragraph (d) of this section. The registration of such machine guns under thi part and their subsequent transfer sha be conditioned upon and restricted t the sale or distribution of such weapon for the official use of Federal, State o local governmental entities. Subject t compliance with the provisions of thi part, manufacturers qualified unde this part may manufacture machin guns on or after May 19, 1986, fo exportation in compliance with th Arms Export Control Act (22 U.S.C 2778) and regulations prescribed thereunder by the Department of State.

(d) *Dealer sales samples*. Subject t compliance with the provisions of thi part, applications to transfer and register a machine gun manufactured o imported on or after May 19, 1986, t dealers qualified under this part will b approved if it is established by specif information the expected governmenta customers who would require a demonstration of the weapon, information a to the availability of the machine gun t fill subsequent orders, and letters from governmental entities expressing a need for a particular model or interest in seeing a demonstration of a particular weapon. Applications to transfer more than the one machine gun of a particular model to a dealer must also establish the dealer's need for the quantity of samples sought to be transferred.

(e) *The making of machine guns on or after May 19, 1986.* Subject to compliance with the provisions of this part, applications to make and register machine guns on or after May 19, 1986, for the benefit of a Federal, State or local governmental entity (e.g., an invention for possible future use of a governmental entity or the making of a weapon in connection with research and development on behalf of such an entity) will be approved if it is established by specific information that the machine gun is particularly suitable for use by Federal, State or local governmental entities and that the making of the weapon is at the request and on behalf of such an entity.

(f) *Discontinuance of business.* Since section 922(o), Title 18, U.S.C., makes it unlawful to transfer or possess a machine gun except as provided in the law, any qualified manufacturer, importer, or dealer intending to discontinue business shall, prior to going out of business, transfer in compliance with the provisions of this part any machine gun manufactured or imported after May 19, 1986, to a Federal State or local governmental, entity, manufacturer, importer, or, subject to the provisions of paragraph (d) of this section, dealer qualified to possess such machine gun.

Par. 77. Section 179.112 is amended by revising paragraph (a) and adding paragraph (d) to read as follows:

§ 179.112 Registration of imported firearms.

(a) Each importer shall file with the Director an accurate notice on Form 2 (Firearms), Notice of Firearms Manufactured or Imported, executed under the penalties of perjury, showing the importation of a firearm. The notice shall set forth the name and address of the importer, identify the importer's special (occupational) tax stamp and Federal firearms license, and show the import permit number, the date of release from Customs custody, the type, model, length of barrel, overall length, caliber, gauge or size, serial number, and other marks of identification of the firearm imported, and the place where the imported firearm will be kept. The Form 2 (Firearms) covering an imported firearm shall be filed by the importer no later than fifteen (15) days from the date the firearm was released from Customs custody. The importer shall prepare the notice, Form 2 (Firearms), in duplicate, file the original return as prescribed herein, and keep the copy with the records required by Subpart I of this part at the premises covered by the special (occupational) tax stamp. The timely receipt by the Director of the notice, Form 2 (Firearms), and the timely receipt by the Director of the copy of Form 6A (Firearms), Release and Receipt of Imported Firearms, Ammunition and Implements of War, required by § 178.112 of this chapter, covering the weapon reported on the Form 2 (Firearms) by the qualified importer, shall effectuate the registration of the firearm to the importer.

* * * * *

(d) Subject to compliance with the provisions of this part, an application, Form 6 (Firearms), to import a firearm by an importer or dealer qualified under this part, for use as a sample in connection with sales of such firearms to Federal, State or local governmental entities, will be approved if it is established by specific information attached to the application that the firearm is particularly suitable for use by such entities. Such information must show why a sales sample of a particular firearm is suitable for such use and the expected governmental customers who would require a demonstration of the firearm. Information as to the availability of the firearm to fill subsequent orders and letters from governmental entities expressing a need for a particular model or interest in seeing a demonstration of a particular firearm would establish suitability for governmental use. Applications to import more than one firearm of a particular model for use as a sample by an importer or dealer must also establish the importer's or dealer's need for the quantity of samples sought to be imported.

Par. 78. Section 179.113 is revised to add the name of the form to be filed for conditional importations. As revised, § 179.113 reads as follows:

§ 179.113 Conditional importation.

The Director may permit the conditional importation or bringing into the United States of any firearm for the purpose of examining and testing the firearm in connection with making a determination as to whether the importation or bringing in of such firearm will be authorized under this subpart. An application under this section shall be filed on Form 6 (Firearms), in triplicate, with the Director. The Director may impose conditions upon any importation under this section including a requirement that the firearm be shipped directly from Customs custody to the Director and that the person importing or bringing in the firearm must agree to either export the weapon or destroy it if a final determination is made that it may not be imported or brought in under this subpart. A firearm so imported or brought into the United States may be released from Customs custody in the manner prescribed by the conditional authorization of the Director.

Par. 79. Section 179.119 is amended to change Regional director (compliance) to the Director. As revised, §179.119 reads as follows:

§ 179.119 Transportation of firearm to effect exportation.

Notwithstanding any provision o § 178.28 of this chapter, it shall not b required that authorization be obtained from the Director for the transportation in interstate or foreign commerce of a firearm in order to effect the exportation of a firearm authorized under the provisions of this subpart.

Par. 80. Paragraph (a) of § 179.122 and the undesignated center heading preceding it are revised to read as follows:

Arms Export Control Act

§ 179.122 Requirements.

(a) Persons engaged in the business of impor‘ing firearms are required by the Arms Export Control Act (22 U.S.C. 2778) to register with the Director. (See Part 47 of this chapter.)

* * * * *

Par. 81. Sections 179.161 and 179.162 are revised to change the procedure for obtaining “Nationa Firearms Act” stamps. As revised §§ 179.161 and 179.162 read as follows:

§ 179.161 National Firearms Ac stamps.

“National Firearms Act” stamp evidencing payment of the transfer ta or tax on the making of a firearm ar maintained by the Director. Th remittance for purchase of the appropriate tax stamp shall be submitte with the application. Upon approval o the application, the Director will caus the appropriate tax to be paid by affixing the appropriate stamp to the application.

§ 179.162 Stamps authorized.

Adhesive stamps of the $5 and $200 denomination, bearing the words "National Firearms Act," have been prepared and only such stamps shall be used for the payment of the transfer tax and for the tax on the making of a firearm.

Par. 82. Sections 179.171 and 179.172 are revised to change the procedure for filing claims for redemption and refunds on purchased "National Firearms Act" stamps. As revised, §§ 179.171 and 179.172 read as follows:

§ 179.171 Redemption of or allowance for stamps.

Where a "National Firearms Act" stamp is destroyed, mutilated or rendered useless after purchase, and before liability has been incurred, such stamp may be redeemed by giving another stamp in lieu thereof. Claim for redemption of the stamp should be filed on Form 843 with the Director. Such claim shall be accompanied by the stamp or by a satisfactory explanation of the reasons why the stamp cannot be returned, and shall be filed within 3 years after the purchase of the stamp.

(68A Stat. 830; 26 U.S.C. 6805)

§ 179.172 Refunds.

As indicated in this part, the transfer tax or tax on the making of a firearm is ordinarily paid by the purchase and affixing of stamps, while special tax stamps are issued in payment of special (occupational) taxes. However, in exceptional cases, transfer tax, tax on the making of firearms, and/or special (occupational) tax may be paid pursuant to assessment. Claims for refunds of such taxes, paid pursuant to assessment, shall be filed on Form 843 within 3 years next after payment of the taxes. Such claims shall be filed with the Director of the Service Center serving the internal revenue district in which the tax was paid. (For provisions relating to hand-carried documents and manner of filing, see §§ 301.6091-1(b) and 301.6402-2(a), respectively, of this chapter.) When an applicant to make or transfer a firearm wishes a refund of the tax paid on an approved application where the firearm was not made pursuant to an approved Form 1 (Firearms) or transfer of the firearm did not take place pursuant to an approved Form 4 (Firearms), the applicant shall file a claim for refund of the tax on Form 843 with the Director. The claim shall be accompanied by the approved application bearing the stamp and an explanation why the tax liability was not incurred. Such claim shall be filed within 3 years next after payment of the tax.

(68A Stat. 808, 830; 26 U.S.C. 6511, 6805)

Par. 83. Section 179.182 is revised to correct a citation. As revised, § 179.182 reads as follows:

§ 179.182 Forfeitures.

Any firearm involved in any violation of the provisions of 26 U.S.C. Chapter 53, shall be subject to seizure, and forfeiture under the internal revenue laws:

Provided, however, That the disposition of forfeited firearms shall be in conformance with the requirements of 26 U.S.C. 5872. In addition, any vessel, vehicle or aircraft used to transport, carry, convey or conceal or possess any firearm with respect to which there has been committed any violation of any provision of 26 U.S.C. Chapter 53, or the regulations in this part issued pursuant thereto, shall be subject to seizure and forfeiture under the Customs laws, as provided by the act of August 9, 1939 (49 U.S.C. App., 781-788).

Par. 84. Section 179.193 is revised to change the Mutual Security Act to the Arms Export Control Act. As revised, § 179.193 reads as follows:

§ 179.193 Arms Export Control Act.

For provisions relating to the registration and licensing of persons engaged in the business of manufacturing, importing or exporting arms, ammunition, or implements of war, see the Arms Export Control Act (22 U.S.C. 2778), and the regulations issued pursuant thereto. (See also Part 47 of this chapter.)

Signed: August 15, 1986.
Stephen E. Higgins,
Director.

Approved: August 27, 1986.
Francis A. Keating,
Assistant Secretary (Enforcement).

(Filed by the Office of the Federal Register o
October 28, 1986, 8:45 am and published in th
Federal Register for October 29, 1986, 51 F.R
39612)

II

Bureau Rulings

Subpart A—ALCOHOL

27 CFR 30.31 DETERMINATION OF PROOF
(Also 30.32, 19.91, 19.383, 19.454, 19.517, and 19.537)

Mettler-Paar DPR 2000 density meter may be used in lieu of a hydrometer and thermometer to determine the proof of distilled spirits for tax determination purposes. ATF Ruling 85-12 amplified.

ATF Rul. 86-2

The Bureau of Alcohol, Tobacco and Firearms (ATF) has been asked whether the Mettler-Paar DPR 2000 density meter may be used in lieu of a hydrometer and thermometer to determine the proof of distilled spirits for tax determination purposes.

Based on advice received from the Mettler-Paar Company, ATF is satisfied that the Mettler-Paar DPR 2000 density meter provides accuracy comparable to the Mettler-Paar DMA 55 density meter. The DPR 2000 density meter provides the advantage of on-line functioning. In ATF Ruling 85-12, the DMA 55 density meter was approved for use for all proof determination purposes, including tax determination.

Held, the Mettler-Paar DPR 2000 density meter may be used under 27 CFR 30.31 in lieu of a hydrometer and thermometer to determine the proof of all types of distilled spirits products whenever the proof of spirits is required to be determined through the use of a hydrometer and thermometer. Conditions of use of the DMA 55 density meter, as described in ATF Ruling 85-12, are applicable to the DPR 2000 density meter.

ATF Ruling 85-12, A.T.F.B. 1985-3 is hereby amplified.

27 CFR 30.32: DETERMINATION OF PROOF OBSCURATION

Mettler-Paar DPR 2000 density meter may be used in lieu of a hydrometer and thermometer to determine the proof of distilled spirits for tax determination purposes. See ATF Ruling 86-2, above.

27 CFR 19.91: GAUGING

Mettler-Paar DPR 2000 density meter may be used in lieu of a hydrometer and thermometer to determine the proof of distilled spirits for tax determination purposes. See ATF Ruling 86-2, above.

27 CFR 19.383: BOTTLING TANK GAUGE

Mettler-Paar DPR 2000 density meter may be used in lieu of a hydrometer and thermometer to determine the proof of distilled spirits for tax determination purposes. See ATF Ruling 86-2, above.

27 CFR 19.454: GAUGE OF DENATURANTS

Mettler-Paar DPR 2000 density meter may be used in lieu of a hydrometer and thermometer to determine the proof of distilled spirits for tax determination purposes. See ATF Ruling 86-2, above.

27 CFR 19.517: GAUGE OF TAX DETERMINATION

Mettler-Paar DPR 2000 density meter may be used in lieu of a hydrometer and thermometer to determine the proof of distilled spirits for tax determination purposes. See ATF Ruling 86-2, above.

27 CFR 19.537: WITHDRAWAL OF SPIRITS FREE OF TAX

Mettler-Paar DPR 2000 density meter may be used in lieu of a hydrometer and thermometer to determine the proof of distilled spirits for tax determination purposes. See ATF Ruling 86-2, above.

27 CFR 21.68 FORMULA NO. 38–F (Also 21.91)

Poloxamer 407, N.F. and PEG-40 Sorbitan Diisostearate, may be used as substitute denaturants for Polysorbate 80, N.F. in SDA Formula No. 38-F.

ATF Rul. 86-3

The Bureau of Alcohol, Tobacco and Firearms (ATF) has been asked whether Poloxamer 407, N.F. and PEG–40 Sorbitan Diisostearate, may be used as substitute denaturants in lieu of Polysorbate 80, N.F. in Specially Denatured Alcohol Formula No. 38–F (SDA 38–F).

Under the authority of 27 CFR 21.91, the Director, ATF, may authorize the use of substitute denaturants where the substitution will not jeopardize the revenue. ATF has examined samples of Poloxamer 407, N.F. and PEG–40 Sorbitan Diisostearate, and determined that both materials are comparable to Polysorbate 80, N.F. when used as a denaturant.

Held, Poloxamer 407, N.F. and PEG–40 Sorbitan Diisostearate, provided PEG–40 Sorbitan Diisostearate meets specifications described below, are suitable substitute denaturants for Polysorbate 80, N.F. in SDA 38–F on an equal quantity (1:1) basis.

The chemical and physical specifications for PEG-40 Sorbitan Diisostearate are as follows:

Chemical Properties

1.	Identification Test (USP xx 1249 XV)	Responds to test A and B under polysorbate 60
2.	Saponification Value (USP XX 920 SV)	45-55
3.	Acid Value (USP XX PG 919)	0-3
4.	Hydroxyl Number (USP XX 920 EV)	50-65

Physical Properties

1.	Appearance (Visual)	Amber Color; Free of Foreign Material
2.	Specific Gravity (USP XX PG 978)	1.02-1.12
3.	Viscosity (cps. @ 80°F)	500-800

Distilled spirits plant proprietors may produce SDA 38-F using the following formulations:

To every 100 gallons of alcohol add:

(1) Six pounds of either boric acid, N.F. or Polysorbate 80, N.F. or Poloxamer 407, N.F. or PEG-40 Sorbitan Diisostearate; 1⅓ pounds of thymol, N.F.; 1⅓ pounds of chlorothymol, N.F. XII; and 1⅓ pounds of menthol, U.S.P.; or

(2) A total of at least 3 pounds of any two or more denaturing materials listed under SDA Formula No. 38-B (SDA 38-B), plus sufficient boric acid, N.F. or Polysorbate 80, N.F. or Poloxamer 407, N.F. or PEG-40 Sorbitan Diisostearate, to total 10 pounds of denaturant; or

(3) Seven pounds of zinc chloride, U.S.P., 2.6 fluid ounces of hydrochloric acid, N.F., and a total of 3 pounds of any two or more of the denaturing materials listed under SDA 38-B.

All formulas on ATF Form 5150, 19, Formula and/or Process for Articles Made with Specially Denatured Spirits, calling for the use of SDA 38-F are required to be approved by the Director, ATF. All references to SDA 38-F on approved formulas are required to be specific with respect to the type of SDA 38-F being used. Manufacturers currently using SDA 38-F who will now use Poloxamer 407, N.F. or PEG-40 Sorbitan Diisostearate, in SDA 38-F are required to revise their formulas to reflect that fact and submit them to ATF for approval.

27 CFR 21.91: GENERAL

Poloxamer 407, N.F. and PEG-40 Sorbitan Diisostearate, may be used as substitute denaturants for Polysorbate 80, N.F. in SDA Formula No. 38-F. See ATF Ruling 86-3, above.

Bureau Procedures

Subpart A—ALCOHOL

27 CFR 5.33(g): Contents of Bottles
(also 5.22(c) and 5.51(d))

Procedures for obtaining label approvals for imported liqueurs, cordials, flavored spirits and distilled gins.

ATF Proc. 86-3

Section 1. PURPOSE

This procedure provides guidelines for obtaining Federal label approval for imported liqueurs, cordials, flavored spirits and distilled gins.

Sec. 2. BACKGROUND

Liqueurs, Cordials and Flavored Spirits

The Bureau has consistently held that importers of all imported liqueurs, cordials and flavored spirits must obtain a statement from the foreign producer listing all ingredients and must submit a minimum 750 ml sample for analysis prior to issuing certificates of label approval.

Section 5.33(g) of Title 27, Code of Federal Regulations reads as follows:

> (g) *Contents of Bottles.* A complete and accurate statement of the contents of the bottles to which labels are to be or have been affixed shall be submitted, on request, to the Director or the regional director (compliance).

Distilled Gins

Section 5.22(c), Class 3, defines "gin" as a product obtained by original and continuous distillation from mash, or by redistillation of distilled spirits, or by mixing neutral spirits, with or over juniper berries and other aromatics, or with or over extracts derived from infusions, percolations, or maceration of such materials, and includes mixtures of gin and neutral spirits. It shall derive its main characteristic flavor from juniper berries and be bottled at not less than 80 proof. Gin produced exclusively by the original distillation or by redistillation may be further designated as "distilled".

In order to properly determine the class of an imported gin, the Bureau has always required that a statement of process be submitted prior to issuing label approvals for gins designated as "distilled" in accordance with 26 CFR 5.51(d). Section 5.51(d) reads as follows:

> (d) *Statements of Process.* Forms 1649 covering labels for gin bearing the word "distilled" as a part of the designation shall be accompanied by a statement prepared, by the manufacturer, setting forth a step-by-step description of the manufacturing process.

The Bureau has determined that several reasonable alternatives exist as to obtaining certificates of label approval for imported liqueurs, cordials and gins.

Sec. 3. ACCEPTABLE PROCEDURES

Prior to issuing certificates of label approval, the Bureau will require one of the following pieces of documentation:

Liqueurs, Cordials and Flavored Spirits

1. A statement of ingredients from the manufacturer and a 750 ml sample; or
2. A statement from the manufacturer that the product to be imported is identically formulated for world-wide distribution, provided ATF has a list of the ingredients on record, and a 750 ml sample; or
3. A 750 ml sample, and a statement from the importer setting forth the specific contents of the product. Such statement must be supported by a laboratory analysis performed by a commercial laboratory as to the specific ingredients contained in the product, and should differentiate between natural and artificial ingredients, colors, flavors, etc.

Distilled Gins

1. A statement of process from the manufacturer specifying the step-by-step process by which the "Distilled Gin" is manufactured; or
2. A statement from the manufacturer that the product to be imported is identically formulated for world-wide distribution, provided ATF has a statement of process on record.

Sec. 4. LIMITATIONS

The Bureau reserves the right to require resubmission of the appropriate documentation and/or samples in situations where the Bureau has reason to believe the product has been changed, or when required by the Director.

IV

Legislation

Subpart A — Currently Enacted Legislation

House Report*
No. 99-360
99th Congress

LAW ENFORCEMENT OFFICERS PROTECTION ACT OF 1985

November 6, 1985

Mr. Hughes, from the Committee on the Judiciary,
submitted the following to accompany H.R. 3132

The Committee on the Judiciary, to whom was referred the bill (H.R. 3132) to amend chapter 44, of title 18, United States Code, to regulate the manufacture, importation, and sale of armor piercing ammunition, and for other purposes, having considered the same, report favorably thereon with amendments and recommend that the bill as amended do pass.

The amendments (stated in terms of the page and line numbers of the introduced bill) are as follows:

Page 6, line 21, strike out "and".

Page 6, line 24, strike out the period and insert in lieu thereof "; and".

Page 6, after line 24, insert the following: "(E) by striking out paragraph (2)".

PURPOSE OF THE LEGISLATION

This bill is designed to protect the nation's law enforcement officers from death or injury by armor piercing ammunition. Armor piercing ammunition is ammunition that is designed to penetrate the bullet resistant armor which has been provided to over one-half of the nation's police officers, and is worn by high government officials and others who may face the risk of violent assault.

BACKGROUND

In 1968, ammunition designed to be armor piercing when fired from a handgun was developed by three men from Lorain, Ohio. They formed a business, KTW, Inc., to manufacture and distribute this ammunition, composed of solid brass projectiles coated with Teflon, with the intention of aiding law enforcement officers in specialized situations.[1]

In 1972, in a conversation between Lester Shubin, Program Manager for Standards of the National Institute of Law Enforcement and Criminal Justice and researchers in the Department of Defense on materials that could be used to improve the durability and performance of police car radial tires, they discussed the properties of a new material, fiber B, recently developed and patented by the DuPont Company, that was less heavy, less bulky, and stronger than nylon that was often used as the cords in tires. This fiber was later marketed by DuPont under the tradename, Kevlar.

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* No Senate Report. See 132 Cong. Rec. S2065-S2066; S2135-S2151 (daily ed. Mar. 6, 1986). No Conference Report. See 132 Cong. Rec. H5931-H5932 (daily ed. Aug. 11, 1986) and 132 Cong. Rec. S11573-S11574 (daily ed. Aug. 13, 1986). See Public Law 99-408, page 112.

[1] Testimony of Dr. Paul J. Kopsch, President, KTW, Inc. before the Subcommittee on Crime of the House Judiciary Committee, March 30, 1982, at Hearings on Armor-Piercing and Exploding Bullets, Serial No. 123, 97th Cong., 2d sess., pp. 66–114.

While campaigning for election as President of the United States, Alabama Governor George C. Wallace was shot and crippled on May 15, 1972 by a man using a handgun. On January 30, 1973, United States Senator John C. Stennis of Mississippi was shot and seriously wounded by a handgun used in a robbery in Washington, D.C. These tragic events stimulated evaluation of the feasibility of using bullet resistant vests to protect government officials. Unfortunately, the armor vests then available, composed of metal plates inserted in fabric pockets, or composed of many layers of nylon, were extremely bulky and heavy. Such vests were primarily used by the military to protect against shrapnel or used by specialized police teams responding to armed confrontations. Those garments were totally unsuitable to be worn daily by a person who faced an unpredictable, yet real, threat of attack by persons armed with a handgun.

Lester Shubin, considering the properties of fiber B, lighter and stronger than nylon, wondered if it could be substituted for nylon to make a garment that would resist penetration by handgun bullets and yet would be light enough and flexible enough to be comfortable for daily wear. In 1973, the National Institute of Law Enforcement and Criminal Justice (NILECJ) created about a dozen assorted garments from Kevlar to conduct tests of their resistance to penetration by bullets, and to test the comfort and wearability of different garments. These tests were carried out in cooperation with ballistics experts from the Edgewood Arsenal. In 1975, the NILECJ made available some 5000 vests to police departments in 15 cities to field test the new bullet resistant soft body armor.[2]

In the course of the field test, on December 23, 1975, Seattle police officer Raymond Johnson became the first police officer whose life was saved by the new, lightweight protective body armor. In the course of the field test, 32 instances were documented in which police officers wearing the lightweight protective armor were saved from death or serious bodily injury when a firearm was discharged at them.[3]

Many individuals recognized the potential market for this product and several dozen firms were soon marketing a wide variety of bullet resistant armor. The variety of claims about the performance characteristics and the effectiveness of the different models equaled the number of products on the market. It became necessary to develop a standard to permit evaluation of the protection afforded by the competing vests. A first standard to measure the ballistic resistance of body armor was developed in March 1972 (The Ballistic Resistance of Police Body Armor, National Institute of Law Enforcement and Criminal Justice, NILECJ-STD 0101.00, March 1972).

Further research and field experience led to the revision of the test standard in December 1978 (NILECJ-STD 0101.01, December 1978). The revised standard defined the tests more accuately, clarified the test procedures, and efined the gradations of protection that hould be afforded by different grades f armor.

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[2] Testimony of Associate Attorney General Rudolph W. Giuliani before the Subcommittee on Crime of the House Judiciary Committee at Hearings on Armor-Piercing and Exploding Bullets, May 12, 1982, Serial No. 123, 97th Cong., 2nd sess.

[3] Testimony of Deputy Assistant Secretary of Treasury Robert E. Powis before the Subcommittee on Crime of the House Judiciary Committee at Hearings on Armor Piercing Ammunition: H.R. 641, H.R. 953, H.R. 3796 and S. 1762 (section 1006) on May 17, 1984, (98th Cong. 2d sess), Serial No. 153.

Three threat levels were developed to rotect against hand guns. Type I vests re designed to resist penetration by .22 ong rifle high velocity ammunition ired from a .22 cal handgun with a arrel length of 6 to 6.5 inches, and .38 pecial roundnose lead ammunition ired from a .38 special handgun with a arrel length of 6 to 6.5 inches.

Type IIA vests are designed to resist enetration by lower velocity .357 Magnum jacketed soft point ammuniion fired from a .357 Magnum handgun with a barrel length of 4 to 4.75 nches, and lower velocity 9mm full metal jacketed ammunition fired from a 9mm handgun with a barrel length of 4 o 4.75 inches.

Type II vests are designed to resist penetration by higher velocity .357 Magnum or higher velocity 9mm ammunition such as described for type IIA vests when fired from similar handguns.

Type III and Type IV vests are designed to resist penetration by certain types of ammunition fired from a rifle.

The value of the soft body armor was apparent to the nation's police officers. Throughout the nation, many police departments purchased armor for their officers to wear. However, simultaneously, while the public was being educated about the need for soft body armor, it was being educated about the capability of armor piercing ammunition. Between 1968 and 1979, some 24 articles appeared in numerous publications that described the armor piercing capability of the KTW ammunition.[4]

In 1979, the New York Patrolmen's Benevolent Association became concerned about the danger to its members and other law enforcement officers posed by the uncontrolled manufacture and distribution of ammunition that was specially designed to be armor piercing, such as KTW ammunition.[5] Although the manufacturers of KTW ammunition intended that it be used by law enforcement agencies, in fact some law enforcement agencies prohibit the use of armor piercing ammunition by their personnel.[6] Such ammunition generally poses a high danger of ricochet when fired in other than laboratory conditions and may be a great danger to bystanders or other law enforcement personnel.[7]

The reality of the danger to the nation's law enforcement officers has been manifested in the course of arrests in which criminal offenders were in possession of armor piercing ammunition and equipping themselves with soft body armor.[8]

History of the Legislation

In the 96th Congress, Representative Mario Biaggi (D-N.Y.) was advised by the New York Patrolmen's Benevolent Association about the availability of armor piercing ammunition and its danger to police officers wearing soft body armor. He introduced the bill, H.R. 7366 (96th Congress) to direct the Secretary of the Treasury to study handgun bullets which have the capacity to pentrate "bulletproof vests".

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[4] Testimony of Dr. Paul J. Kopsch, March 30, 1982, p. 67 note 1, supra.

[5] Testimony of Representative Mario Biaggi before the Subcommittee on Crime, March 30, 1982, note 1, supra.

[6] Testimony of Norman Darwick, Executive Director, International Association of Chiefs of Police, May 12, 1982, supra, at p. 150.

[7] Testimony of Rep. Mario Biaggi, March 30, 1982, supra, at p. 43.

[8] *See* report to Rep. Mario Biaggi from Kent M. Ronhovde, Legislative Attorney, Congressional Research Service, Library of Congress, on Summaries of Reported Judicial Decisions Making Reference to Armor-Piercing Ammunition, November 27, 1984, in Hearings before the Subcommittee on Crime on Armor Piercing Ammunition, May 9, 1985.

In the 97th Congress, Rep. Biaggi reintroduced the bill for the study (H.R. 2280, 97th Cong., 1st sess.). In the second session, Representative Joseph Minish (D-N.J.) introduced a substantially similar bill, H.R. 5392 (97th Congress).

On February 3, 1982, Rep. Biaggi introduced H.R. 5437, "the Law Enforcement Officers Protection Act of 1982", which would have (1) prohibited manufacturers, importers or dealers licensed under chapter 44 of title 18, United States Code, from manufacturing, importing or dealing in "restricted handgun bullets", and (2) provided for a mandatory prison sentence for any person who used or carried restricted ammunition in the commission of a Federal crime.

In the 97th Congress, the Subcommittee on Crime held two days of hearings on the three bills, on March 30 and May 12, 1982. Testimony was received from Representative Biaggi, Associate Attorney General Rudolph W. Giuliani, Deputy Assistant Secretary of the Treasury for Enforcement Robert E. Powis, from the developers and manufacturers of the KTW ammunition, from body armor manufacturers, from the International Brotherhood of Police Officers, from the Patrolmen's Benevolent Association of the City of New York, from the International Association of Chiefs of Police, from the National Rifle Association and other interested organizations and individuals.

Several serious problems were found in H.R. 5437. Perhaps the most serious problem, as identified by the expert witnesses from the Department of the Treasury, was in the definition of "restricted handgun bullet" which was based on the penetration of body armor "with penetration resistance equal to or greater than that of eighteen layers of kevlar [sic]." [9]

Associate Attorney General Rudolph W. Guiliani observed that, "we cannot justify legislation banning all ammunition capable of penetrating the type of soft armor worn by law enforcement officials." This objection was based on the problem of the interchangability of ammunition between long guns and handguns. If all ammunition which could be fired from a handgun, which would penetrate soft body armor under the test condition, were to be banned from manufacture, importation and sale, it would include many types of sporting ammunition as well. Such a definition was unacceptable. Mr. Giuliani concluded, "we will continue to work with the Department of Treasury and with this subcommittee and others to develop a workable definition of such bullets." [10]

The Administration took the approach that, in the interim, an additional penalty should be enacted to be imposed on persons who carried or used armor-piercing ammunition in a firearm, that when fired from that firearm, would penetrate type IIA body armor. That approach was not finalized nor transmitted by the Administration to the Speaker in the 97th Congress.

There was enormous concern among Members of Congress on the progress of the search for a suitable definition of armor piercing ammunition promised by Mr. Giuliani.[11]

Early in the 98th Congress, Representative Biaggi reintroduced his legislation from the 97th Congress as H.R. 953 (Representative Joseph Minish introduced the same bill three weeks earlier as H.R. 641). Proposals to provide a special criminal penalty for using or carrying a weapon loaded with armor piercing ammunition were introduced by Representative Silvio Conte (H.R. 3796), and as part of the Comprehensive Crime Control Act submitted to Congress by the President, March 16, 1983 (H. Doc. 98-32).

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[9] H.R. 5437, section 4(1).

[10] Testimony of Associate Attorney General Rudolph W. Giuliani before the Subcommittee on Crime of the House Committee on the Judiciary, May 12, 1983, Hearings on Armor-Piercing and Exploding Bullets, Serial No. 123, (97th Cong., 2d sess.), page 134.

[11] Opening Statement of Crime Subcommittee Chairman William J. Hughes at hearings of the Subcommittee on Crime of the House Committee on the Judiciary on Armor Piercing Ammunition, May 17, 1984, pp. 14–16 (98th Cong. 2d sess.) Serial No. 153.

During the 98th Congress, many of the questions involved in this issue were intensively examined. In the spring of 1984 the Crime Subcommittee undertook a review of the status of the Executive Branch efforts to resolve the problems identified in the 1982 hearings. During 1983, the Department of Justice developed and sent to the Office of Management and Budget (OMB) draft legislation to ban the manufacture and importation of armor piercing ammunition that defined armor piercing using a standard of penetration based on standardized aluminum plates. This approach was disapproved of by the Treasury Department which favored focusing on "ammunition which is specifically designed and marketed to be armor piercing." [12] At the May 12 hearing, the Subcommittee learned that OMB had rejected the Justice Department draft that winter.

Under Treasury's guidance, in June 1984, the Administration announced that it had developed a bill which defined armor piercing ammunition on the basis of projectiles constructed from seven hard metals: tungsten alloys, steel, iron, brass, bronze, beryllium copper and depleted uranium. The bill also provided for a mandatory prison sentence for the carrying or use in the commission of a crime of a handgun loaded with armor piercing ammunition.

The Administration bill was introduced by three members: H.R. 5835 by Representative Mario Biaggi; 5844 by Representative Hamilton Fish; and H.R. 5845 by Representative Jack Brooks.

A hearing was held on the three virtually identical bills on June 27, 1984 by the Subcommittee on Crime. The principal witness for the Administration was Assistant Secretary of the Treasury (Enforcement and Operations) John M. Walker, Jr. who described the bill as,

> the successful culmination of a long and strenuous effort by the Administration to find an appropriate and enforceable definition of armor-piercing projectiles. By appropriate I mean a definition which would successfully balance the needs of law-abiding sportsmen and hunters with the important law enforcement goal of providing police officers with assurance that their soft-body armor will afford greater protection against gunfire from the criminal element.[13]

However, in the course of the hearing it became clear that the "greater protection" intended by the Administration's bill had some omissions. Principally the bill did not address the problem of sale. As pointed out by Edward Murphy, Legislative Counsel, International Brotherhood of Police Officers, the bill did not "prevent the sale of bullets already in the stock of dealers.

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[12] Testimony of Deputy Assistant Secretary of the Treasury (Enforcement) Robert E. Powis before the Subcommittee on Crime of the House Committee on the Judiciary, May 17, 1984.

[13] Testimony before the Subcommittee on Crime of the House Judiciary Committee, June 27, 1984, at a Hearing on H.R. 5835, H.R. 5844 and H.R. 5845, Bills Relating to Armor-Piercing Ammunition, 98th Cong. 2d sess., Serial No. 153.

This leaves the stock of cop killer bullets of an indeterminate size which can be purchased by the criminal element."[14] Since the bill would have applied only to manufacturers and importers, and there already were voluntary agreements with the known current manufacturers and importers not to sell to the general public,[15] it did not provide any greater protection to law enforcement officers than already existed.[16]

The bill did not provide for manufacturing or importation for the purpose of testing. In order for firms that manufacture bullet resistant armor, bullet resistant glass, and other security products to test these products, it is necessary for them to be able to fire various types of projectiles, including armor piercing projectiles at them. This was also one of the objections to earlier legislation.[17]

The Committee examined concerns that projectiles that were not constructed entirely from one of the seven hard metals would not be covered by the legislation. The Subcommittee developed amendments which would have allowed the Secretary to identify ammunition containing projectiles which were determined to be of a substantially similar composition to the projectiles constructed entirely of the seven metals. An amendment was adopted which would also have permitted the Secretary of the Treasury to purchase armor piercing ammunition that was voluntarily surrendered during a one year period following the date of enactment. On August 1, 1984, the Subcommittee on Crime reported a clean bill, H.R. 6067. H.R. 6067 was favorably reported by the Committee on August 8, 1984. Although scheduled for floor consideration, the bill was never called up for debate.

The 98th Congress did enact an additional penalty for using or carrying a handgun loaded with armor-piercing ammunition which, when fired from the handgun under a specified test procedure, would penetrate the Type IIA soft body armor, as part of the Comprehensive Crime Control Act of 1984 (section 1006 of P.L. 98-473; 18 U.S.C. 929).[18]

ACTION IN THE 99TH CONGRESS

In the 99th Congress, Representative Mario Biaggi introduced H.R. 4, a simplified version of H.R. 6067, and Representative Jack Brooks introduced H.R. 13, which was the same as H.R. 5845. H.R. 4 did not include the provisions in H.R. 6067 that would have included within the definition of armor piercing ammunition bullets which were "substantially similar" to those constructed from the specified seven hard metals, and did not authorize the Secretary to purchase surrendered armor piercing ammunition.

On May 9, 1985, the Subcommittee held a lengthy hearing on H.R. 4 and H.R. 13. At that time the Administration modified its position by proposing amendments controlling the sale of armor piercing ammunition manufactured after the effective date of the act through both civil and ciminal penalties.[19]

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[14] *Ibid.*

[15] See letter to Representative William J. Hughes from Assistant Secretary of the Treasury (Enforcement and Operations) John M. Walker, Jr., March 28, 1985, in Hearings before the Subcommittee on Crime on Armor Piercing Ammunition, May 9, 1985, 99th Cong., 2d sess.

[16] See testimony of John M. Klein before the Subcommittee on Crime, March 30, 1982, Serial No. 123, (97th Cong., 2d sess.) at p.71 and pp. 111–113.

[17] Testimony of John M. Klein, President, North American Ordnance Corporation before the Subcommittee on Crime, March 30, 1982, Serial No. 123 (97th Cong. 2d sess.) at p. 73; and testimony of George Kass, Forensic Ammunition Service, before the Subcommittee on Crime, June 27, 1984 (98th Cong. 2d sess.), Serial No. 153.

[18] See S. Rep. 98-225 for S. 1762 at pp. 315-317.

On July 30, 1985, the Subcommittee on Crime, a quorum being present, adopted the following four amendments and reported H.R. 4 as a clean bill (H.R. 3132).

(1) The Subcommittee added a new section 6 to require manufacturers and importers to mark ammunition and to label packages of armor piercing ammunition as the Secretary may prescribe. This amendment was recommended by the Administration.[20]

(2) In section 2, the Subcommittee clarified the definition of armor piercing ammunition to explicitly include the assembled ammunition, projectiles and projectile components. This amendment was also recommended by the Administration.[21]

(3) The subcommittee created a new section 7 to strengthen the offense of carrying or using armor-piercing ammunition in the course of committing a crime of violence, enacted as part of the Comprehensive Crime Control Act of 1984 (Section 1006 of P.L. 98—473; 18 U.S.C. 929). This new offense defined armor-piercing ammunition, for the purpose of the offense only, in terms of the actual ability of an ammunition-firearm combination to penetrate type IIA soft body armor when fired under rigorous test procedures. This amendment strengthens current law by expanding the offense to cover crimes committed with long guns as well as handguns, and by eliminating the requirement that armor-piercing ammunition in the possession of the offender actually be loaded in the firearm. As a result, it would cover a great many instances in which offenders are heavily armed in the commission of a crime of violence, and would therefore be a strong deterrent to committing crimes of violence with a powerful firearm-ammunition combination. This "use" offense with the armor-piercing ammunition definition ("penetration") now in the law covers many more instances of violent criminal conduct than would be covered if the narrower "composition" definition of armor piercing ammunition in section 2 of H.R. 3132 in the manufacture, import and sale offenses were to be substituted.[22] The Senate Committee on the Judiciary, in reporting S. 104, made similar expansions in this offense although it substituted the "composition" definition for the "penetration" definition.

PROHIBITION ON SALE

(4) In Section 5, which prohibits dealers from selling armor piercing ammunition (except for specified purposes) in the course of business, following notice from the Secretary, the Subcommittee adopted an amendment to clarify that the notice to dealers that such ammunition is armor piercing ammunition must *"adequately identify"* such ammunition.

This section of the bill is the most important provision of the legislation since it addresses the sale of the ammunition. The Committee has determined that the armor piercing ammunition now available from licensed dealers which is armor piercing poses the greatest danger to the nation's law enforcement officers.[23] Testimony was received that there may be difficulty in visually distinguishing a few types of armor piercing ammunition from non-armor piercing ammunition of almost identical appearance.[24] The Committee, by requiring that the notice from the Secretary adequately identify armor piercing ammunition, intends to assure that dealers are given a full opportunity to be made completely aware of what ammunition may be in their inventory which may be subject to these regulations. If a dealer is unable to determine that a particular round of ammunition is ammunition described in a notice from the Secretary as armor piercing, then such dealer's sale of such ammunition for other than the permitted purposes would not be grounds for a license revocation.

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[19] Testimony of Deputy Assistant Secretary of the Treasury (Operations) Edward T. Stevenson before the Subcommittee on Crime, May 9, 1985.

[20] Testimony of Deputy Assistant Secretary of the Treasury (Operations) Edward T. Stevenson before the Subcommittee on crime, May 9, 1985.

[21] *Ibid.*

[22] See testimony of Associate Attorney General Rudolph W. Giuliani before the Subcommittee on Crime on May 12, 1982, Hearings before the Subcommittee on Crime on Armor Piercing and Exploding Bullets, Serial No. 123 (97th Cong. 2d sess.), pp. 134-135, 138-139, 142-146.

Firearms dealers, as all merchants do, have a duty to know the nature of the goods they are selling to their customers. As a Federal licensee they have an additional legal duty to be aware of and to comply with the regulations which apply to them.[25]

This is strictly a regulatory provision. The Committee believes that strict liability for violating this regulation is appropriate considering the requirement that explicit notice be sent to the dealers. It has long been recognized that regulatory schemes to protect life, which may be either civil or criminal in their sanctions, even if based upon strict liability are not only constitutional but frequently necessary.[26] Strict liability has been upheld and endorsed in the *criminal* context of unlawfully selling narcotics without a written order where the defendant claimed that the indictment was insufficient for failing to allege that he had known that the drugs sold were narcotics.[27] Chief Justice Taft, writing for the Court, after discussing the general rule of *scienter* observed,

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[23] See discussion at note 8 and notes 14-16, *supra.*

[24] Testimony of Deputy Assistant Secretary of the Treasury (Operations) Edward T. Stevenson before the Subcommittee on Crime, May 9, 1985.

[25] In *United States* v. *Park,* 421 U.S. 658 (1975), the Court upheld the conviction of the president of a large national food chain for violations of the Federal Food, Drug, and Cosmetic Act involving the exposure of interstate shipments of food to rodent contamination at a company warehouse. While the company pleaded guilty, the president argued that provision of sanitary storage was a matter that he had delegated to "dependable subordinates." At issue on appeal to the Supreme Court was whether proof of "wrongful action" on the part of the president was an element of the offense required by due process. The Court's holding that such proof was not necessary supports the Committee's view that a failure by a licensed firearms dealer to track ammunition in his inventory, about which he has received a special notice from the Secretary of the Treasury, should be grounds for a permissive license revocation, following a hearing, in spite of an absence of knowledgeable wrongdoing. The Court's description of the Federal Food, Drug, and Cosmetic Act is illustrative of the Committee's concern here:

". . . .the Act imposes not only a positive duty to seek out and remedy violations when they occur, but also, and primarily, a duty to implement measures that will insure that violations will not occur. The requirement of foresight and vigilance imposed on responsible corporate agents are beyond question demanding and perhaps onerous, but they are no more stringent than the public has a right to expect of *those who voluntarily assume positions of authority in business enterprises whose services and products affect the well-being of the public that supports them.*" (421 U.S. at 672) (emphasis added).

[26] "It is a general principle of our law that there is no individual liability for an act *which ordinary human care and foresight could not guard against.* It is also a general principle of the same law that a loss from any cause purely accidental must rest where it chances to fall. But behind and above these general principles which the law recognizes as ordinarily prevailing, there lies the legislative power, which, in the absence of organic restraint, may, for the general welfare of society, impose obligations and responsibilities otherwise non-existent.

"Primarily, government exist for the maintenance of social order. Hence it is that the coligation of the government *to protect life,* liberty and property *against the conduct of the indifferent, the careless* and the evil-minded may be regarded as lying at the very foundation of the social compact. A recognition of this supreme obligation is found in those exertions of the legislative power which have as an end the preservation of social order and the protection of the welfare of the public and the individual. If such legislation be reasonably adapted to the end in view affords a hearing before judgment, and is not forbidden by some other affirmative provision of constitutional law, it is not to be regarded as denying due process of law under the provisions of the Fourteenth Amendment." *City of Chicago* v. *Sturges,* 222 U.S. 313, 322 (1911) (upholding the exercise of state police powers) (emphasis added).

> It has been objected that punishment of a person for an act in violation of law when ignorant of the facts making it so, is an absence of due process of law. But that objection is considered and overruled in *Shevlin-Carpenter Co.* v. *Minnesota,* 218 U.S. 57, 69, 70, in which it was held that in the prohibition or punishment of particular acts, the State may in the maintenance of a public policy provide "that he who shall do them shall do them at his peril and will not be heard to plead in defense good faith or ignorance." Many instances of this are to be found in regulatory measures in the exercise of what is called the police power where the emphasis of the statute is evidently upon achievement of some social betterment rather than the punishment of the crimes as in cases of *mala in se*. . . .[28]

Chief Justice Taft went on to stress that "where one deals with others and his mere negligence may be dangerous to them, as in selling diseased food or poison, the policy of the law may, in order to stimulate proper care, require the punishment of the negligent person though he be ignorant of the noxious character of what he sells".[29] In language that is quite appropriate to prohibiting the sale of armor piercing ammunition, as well as narcotics, the Court concluded:

> [The statute's] manifest purpose is to require every person dealing in drugs to ascertain at his peril whether that which he sells comes within the inhibition of the statute, and if he sells the inhibited drug in ignorance of its character, to penalize him. Congress weighed the possible injustice of subjecting an innocent seller to a penalty against the evil of exposing innocent purchasers to danger from the drug, and concluded that the latter was the result preferably to be avoided. Doubtless considerations as to the opportunity of the seller to find out the fact and the difficulty of proof of knowledge contributed to this conclusion.[30]

This is the essence of the Committee's analysis, yet the Committee chose to ameliorate this problem in two significant ways. First, the Committee would require notice to the dealer to reduce to an aboslute minimum the risk that the dealer would sell ammunition ignorant of its armor piercing character. Secondly, the Committee chose to use only the sanction of a civil penalty, which is much less severe than the term of imprisonment allowed in the statute upheld in *Balint*.

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[27] *United States* v. *Balint,* 258 U.S. 250 (1922).

[28] *Ibid,* at 252.

[29] *Ibid,* at 253.

[30] *Ibid,* at 254.

It has been suggested by members of the Committee that " 'law-abiding' [Federally licensed firearms] dealers should not be punished for mistaken sales of such ammunition." [31] This begs the question since they are not "law-abiding" if they disregard the duty imposed upon them as Federal licensees and sell armor piercing ammunition, *which has been specially identified to them by a notice from the Secretary*, under prohibited circumstances. The only reason that is asserted which might explain such a mistaken sale is that some armor piercing ammunition is indistinguishable from nonarmor-piercing ammunition. If that is truly the case, then it follows that there is simply no notice that the Secretary of the Treasury can write which will meet the statutory requirement that it "adequately identify" the ammunition.

It is suggested that the "problem" of indistinguishable ammunition be corrected by requiring that the Government prove that the sale of ammunition, *which has been identified* as armor piercing, to persons not entitled to purchase such ammunition had been "willful". Obviously, this misses the point. If the ammunition is distinguishable, then the dealer should be held to an appropriately high standard of strict liability. If the ammunition is indistinguishable, then the state of mind is irrelevant—there can be no notice and therefore no violation.

Several members of the Committee have pointed to S. 104, as reported by the Senate Judiciary Committee, as an example of satisfactory resolution of these issues. Unfortunately, S. 104 has a significant omission which is that it does not address the problem of the sale of the currently existing armor piercing ammunition now in the channels of distribution. It should be noted that no dealer can violate the provisions of S. 104 by selling any armor piercing ammunition manufactured before the effective date of the act. Section 6 of S. 104 does not permit sale of armor piercing ammunition, manufactured after the effective date of the Act, by licensed dealers under any circumstances.[32] There is no way that a dealer, under any construction of the prohibition in S. 104, could sell armor piercing ammunition (knowing it to be armor piercing) and be "operating in good faith." [33]

The Committee's reported bill allows dealers to sell armor piercing ammunition under two types of circumstances. First, sales by licensed dealers are permitted if they are not in the course of business, for example if they were occasional sales out of their personal collections of specialized types of bullets. It should be noted that existing law permits sales not in the course of business by owners of firearms or ammunition. Secondly, H.R. 3132 permits sales in the course of business for the purpose of

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[31] Additional views of Rep. Jack Brooks, *infra*, p. 19.

[32] *Compare* page 4, lines 22-25, and page 5, lines 1-4 of H.R. 3132, introduced July 31, 1985, *with* page 8, lines 16-18 of S. 104, Calendar No. 254, July 29, 1985.

[33] *See* Additional Views, *infra*, p. 20. Indeed, if the dealer were aware of a risk that the ammunition was armor piercing ammunition and went ahead and sold it, he certainly is not "operating in good faith". All that the regulatory offense in S. 104 would accomplish would be to make it difficult for the government to prove that violators of the statute "willfully" sold armor piercing ammunition. If the ammunition were armor piercing and indistinguishable from non-armor piercing, the question of the "good faith" of the dealer in selling such ammunition is nonexistent.

by the United States or any depart-
nt or agency thereof, or any depart-
nt, agency or political subdivision
reof; for the purpose of exportation;
for the purpose of testing or ex-
imentation authorized by the secre-
y of the Treasury. The assertion
t under H.R. 3132 "Any sale (ex-
t those specifically authorized) of
nor-piercing [sic] ammunition, by
stake or otherwise, will constitute a
lation of the Act," [34] is mistaken.

As to issues of states of mind, S. 104
ates a *criminal offense*, carrying fel-
y penalties, for the sale of armor
rcing ammunition by manufacturers
d importers that does not require
oof of any state of mind to obtain a
nviction. For the less serious admin-
rative offense by licensed dealers of
nsferring armor piercing ammuni-
n, the government must prove that
e transfer was "willful." The term
villful" does not give the courts any
ar guidance of the *scienter* required.
T]he term 'willful' has been con-
ued by the courts in a variety of
ys, often consistent and con-
dictory. The courts have defined a
illful' act as an act done voluntarily
distinguished from accidentally, an
t done with specific intent to violate
e law, an act done with bad purpose,
act done without justifiable excuse,
act done stubbornly, an act done
thout grounds for believing it is law-
l, and an act done with careless dis-
gard whether or not one has the right
so act." [35]

H.R. 3132, would require, in order
revoke the license of a firearms deal-
, (1) that the dealer transferred
nmunition, (2) that was in fact armor piercing ammunition, (3) that was not transferred for a permitted purpose, (4) that before the transfer the dealer had received a notice from the Secretary of the Treasury, and (5) that the notice adequately identified the ammunition as armor piercing ammunition. The Committee believes that given the substantial potential harm to public safety and to the nation's law enforcement officers, it is sufficient to put a burden on the licensee to read the notices that he receives from the Secretary and not to make a mistake when he sells armor piercing ammunition. After proving the five elements above, it should not have to be the Government's further burden to prove that the dealer, not simply knowingly, but deliberately broke the law where no criminal penalty attaches.

COMMITTEE ACTION

On September 10, 1985, the Committee on the Judiciary, a quorum being present, favorably reported to House of Representatives the bill, H.R. 3132, by a voice vote, with a technical amendment.

SECTION-BY-SECTION ANALYSIS

Section 1 is the short title.

Section 2 is the definition of armor piercing ammunition. This is the definition developed by the Administration without substantive change.

Armor piercing ammunition is ammunition containing a projectile or projectile core, or a projectile or projectile core, that is constructed entirely (excluding the presence of traces of other substances) from one or a combination of any of seven metals: tungsten alloys, steel, iron, brass, bronze, beryllium copper, or uranium.

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[34] *Ibid.*

[35] S. Rep. 97-307 to accompany S. 1630, The Criminal Code Reform Act of 1981 (97th Cong. 1st
s.) at 63-64, citing for example, *Screws* v. *United States*, 325 U.S. 91 (1945); *Spies* v. *United States*,
7 U.S. 492 (1943); *United States* v. *Murdock*, 290 U.S. 389 (1933), and cases cited therein. *See also*
orking Papers of the National Commission on Reform of Federal Criminal Laws, July 1970, Vol. I
148; and Note, *An Analysis of the Term "Willful" in Federal Criminal Statutes*, 51 NOTRE
AME LAW. 786 (1976).

The term *does not include* shotgun shot so constructed in order to comply with Federal or State law (principally hunting regulations, wildlife conservation and environmental protection laws), frangible projectiles designed for target shooting, ammunition containing such frangible projectiles, or *any ammunition, projectile or projectile core which the Secretary of the Treasury determines is primarily intended to be used for sporting purposes.*

Section 3 is the prohibition on manufacturing or importing armor piercing ammunition.

It makes it an unlawful act for any person to manufacture or import armor piercing ammunition except for three purposes:

(1) For the use of the United States or any department or agency, or any State or any department, agency, or political subdivision thereof;

(2) For the purpose of export; or

(3) For any testing or experimentation authorized by the Secretary of the Treasury.

The penalty for unlawful manufacture or importation would be a maximum prison term of 5 years and a maximum fine of $250,000.

Section 4 provides that the annual license fee for a manufacturer or a dealer in armor piercing ammunition shall be $1000 per year. This is the annual fee now imposed for manufacturers and dealers in destructive devices and ammunition for destructive devices.

Section 5 prohibits the sale of armor piercing ammunition by licensed dealers in the course of business (except for the same purposes for which such ammunition may be manufactured (see section 3, *supra*)) who have notice from the Secretary adequately identifying such ammunition and specifying that such ammunition is armor piercing.

The penalty for such dealers selling such ammunition is the revocation of their license following a hearing. It should be noted that an opportunity for review by a United States District Court is provided for in 18 U.S.C. 923(f)(3).

Section 6 requires the marking of armor piercing ammunition and the packaging thereof by licensed importers and manufacturers in such manner as the Secretary shall by regulation prescribe.

Section 7 amends the current offense (18 U.S.C. 929 (P.L. 98–473, section 1006)) of using or carrying a handgun loaded with armor-piercing ammunition, capable of penetrating type IIA soft body armor, during and in relation to the commission of a crime of violence. It expands the offense to cover all types of firearms and would only require possession of armor-piercing ammunition capable of being fired in that firearm.

This offense carries a minimum prison term of 5 years and a maximum prison term of 10 years. No sentence of probation or suspension of sentence is permitted. The sentence must be served consecutively to any other sentence, and no parole is permitted.

Section 8 contains the effective dates. Section 7, amending the current criminal offense, would take effect immediately. The other sections concerning manufacture, import and sale would take effect on the first day of the first calendar month which begins more than 90 days after the date of enactment.

* * * * *

Public Law 99–408 *
H. R. 3132
99th Congress
Approved: August 28, 1968

ARMOR PIERCING AMMUNITION

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 921(a)(17) of title 18 of the United States Code is redesignated as section 921(a)(17)(A), and a new subparagraph (B) is added to section 921(a)(17) to read as follows:

"(B) The term 'armor piercing ammunition' means a projectile or projectile core which may be used in a handgun and which is constructed entirely (excluding the presence of traces of other substances) from one or a combination of tungsten alloys, steel, iron, brass, bronze, beryllium copper, or depeleted uranium. Such term does not include shotgun shot required by Federal or State environmental or game regulations for hunting purposes, a frangible projectile designed for target shooting, a projectile which the Secretary finds is primarily intended to be used for sporting purposes, or any other projectile or projectile core which the Secretary finds is intended to be used for industrial purposes, including a charge used in an oil and gas well perforating device."

Sec. 2. Section 922(a) of title 18 of the United States Code is amended—

(a) by striking out "and" at the end of paragraph (5);

(b) by striking out the period at the end of paragraph (6) and inserting in lieu thereof a semicolon: and

(c) by adding after paragraph (6) the following:

"(7) for any person to manufacture or import armor piercing ammunition, except that this paragraph shall not apply to—

"(A) the manufacture or importation of such ammunition for the use of the United States or any department or agency thereof or any State or any department, agency, or political subdivision thereof;

"(B) the manufacture of such ammunition for the purpose of exportation; and

"(C) any manufacture or importation for the purposes of testing or experimentation authorized by the Secretary; and

"(8) for any manufacturer or importer to sell or deliver armor piercing ammunition, except that this paragraph shall not apply to—

"(A) the sale or delivery by a manufacturer or importer of such ammunition for use of the United States or any department or agency thereof or any State or any department, agency, or political subdivision thereof;

"(B) the sale or delivery by a manufacturer or importer of such ammunition for the purpose of exportation;

"(C) The sale or delivery by a manufacturer or importer of such ammunition for the purposes of testing or experimenting authorized by the Secretary."

Sec. 3. Subparagraph (A) of section 923(a)(1) of title 18 of the United States Code is amended to read as follows:

"(A) of destructive devices, ammunition for destructive devices or armor piercing ammunition, a fee of $1,000 per year;”.

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* House Report No. 99-360, page 100. No Senate Report.

Sec. 4. Subparagraph (C) of section 923(a)(1) of title 18 of the United States Code is amended to read as follows:

“(C) of ammuniction for firearms, other than ammunition for destructive devices or armor piercing ammunition, a fee of $10 per year.”

Sec. 5. Subparagraphs (A) and (B) of section 923(a)(2) of title 18 of the United States Code are amended to read as follows:

“(A) of destructive devices, ammunition for destructive devices or armor piercing ammunition, a fee of $1,000 per year; or

“(B) of firearms other than destructive devices or ammunition for firearms other than destructive devices, or ammunition other than armor piercing ammunition, a fee of $50 per year.”

Sec. 6. Section 923(e) of title 18, United States Code, is amended by inserting after the first sentence the following: “The Secretary may, after notice and opportunity for hearing, revoke the license of a dealer who willfully transfers armor piercing ammunition.”

Sec. 7. Section 923 of title 18, United States Code, is amended by adding at the end thereof the following:

“(k) Licensed importers and licensed manufacturers shall mark all armor piercing projectiles and packages containing such projectiles for distribution in the manner prescribed by the Secretary by regulation. The Secretary shall furnish information to each dealer licensed under this chapter defining which projectiles are considered armor piercing ammunition as defined in section 921(a)(17)(B).”

Sec. 8. Section 929 of title 18 of the United States Code is amended—

(1) in subsection (a)—

(A) by striking out “violence including” and inserting “violence (including” in lieu thereof;

(B) by striking out “device for” and inserting “device) for” in lieu thereof;

(C) by striking out “uses or carries any handgun” and all that follows through “subsection (b)” and inserting in lieu thereof “uses or carries a firearm and is in possession of armor piercing ammunition capable of being fired in that firearm”;

(D) by striking out “nor more than ten”; and

(E) by striking out the last two sentences; and

(2) so that subsection (b) reads as follows:

“(b) Notwithstanding any other provision of law, the court shall not suspend the sentence of any person convicted of a violation of this section, nor place the person on probation, nor shall the terms of imprisonment run concurrently with any other terms of imprisonment, including that imposed for the crime in which the armor piercing ammunition was used or possessed. No person sentenced under this section shall be eligible for parole during the term of imprisonment imposed herein.”

Sec. 9. The amendments made by this Act shall take effect on the date of enactment of this Act, except that sections 3, 4, and 5 shall take effect on the first day of the first calendar month which begins more than ninety days after the date of the enactment of this Act.

SEC. 10. For purposes of section 921(a)(17)(B) of title 18, United States Code, as added by the first section of this Act, "handgun" means any firearm including a pistol or revolver designed to be fired by the use of a single hand. The term also includes any combination of parts from which a handgun can be assembled.

V

Administrative Matters

Subpart C—Treasury Department Orders and Delegation Orders

Delegation Order ATF O 1100.91B

Delegation to the Associate Director (Compliance Operations) of Authorities of the Director in 27 CFR Part 20, Distribution and Use of Denatured Alcohol and Rum

Delegation Order

1. *Purpose.* This order delegates certain authorities of the Director to the Associate Director (Compliance Operations) and permits redelegation to other Compliance Operations personnel.

2. *Cancellation.* ATF O 1100.91A, Delegation Order—Delegation to the Associate Director (Compliance Operations) of Authorities of the Director in 27 CFR Part 211, Denatured Alcohol and Rum, dated May 10, 1984, is canceled.

3. *Background.* Under current regulations, the Director has authority to take final action on matters relating to the distribution and use of denatured alcohol and rum. We have determined that certain of these authorities should, in the interest of efficiency, be delegated to a lower organization level.

4. *Delegations.* Under the authority vested in the Director, Bureau of Alcohol, Tobacco and Firearms, by Treasury Department Order No. 221, dated June 6, 1972, and by 26 CFR 301.7701–9, authority to take final action on the following matters is delegated to the Associate Director (Compliance Operations):

a. To prescribe all forms required by regulations under 27 CFR 20.21(a).

b. To approve, pursuant to written applications, alternate methods or procedures (including alternate construction or equipment, but excluding action on general-use formulas) in lieu of methods or procedures specifically prescribed in regulations, under 27 CFR 20.22(a).

c. To withdraw approval of any alternate method or procedure whenever the revenue is jeopardized or the effective administration of the regulations is hindered, under 27 CFR 20.22(c).

d. To issue permits, pursuant to 27 CFR 20.242, to cover the use of specially denatured spirits by the United States or a governmental agency, under 27 CFR 20.25.

e. To approve the printing of extraneous matter on labels which are to be used on containers of completely denatured alcohol of 5 gallons or less, under 27 CFR 20.147.

f. To authorize other marks to be placed on the Government head or side of a package, under 27 CFR 20.178.

g. To approve applications and grant permits on ATF Form 5150.33, Spirits for Use of the United States, for the procurement and withdrawal of specially denatured spirits for use by the United States or any governmental agency, and to receive evidence of authority to sign for the head of an agency or subagency, under 27 CFR 20.242.

h. To cancel permits issued under 27 CFR 20.245.

i. To authorize the disposition of excess specially denatured spirits in the possession of a governmental agency, under 27 CFR 20.246.

5. *Redelegation.*

a. The authorities in paragraphs 4a and 4c above may be redelegated to personnel in Bureau Headquarters not lower than the position of branch chief.

b. The authorities in paragraphs 4b and 4d through 4i above may be redelegated to personnel in Bureau Headquarters not lower than the position of ATF specialist.

c. The authority in paragraph 4b above may be redelegated to regional directors (compliance) to approve, without submission to Bureau Headquarters, subsequent applications for alternate methods or procedures and processes which are identical to those previously approved by Bureau Headquarters. Regional directors (compliance) may redelegate this authority to personnel not lower than the position of technical section supervisor.

d. The authority in paragraph 4i above may be redelegated to regional directors (compliance), who may redelegate this authority to personnel not lower than the position of technical section supervisor or area supervisor.

e. The authority in paragraph 4c above may be redelegated to regional directors (compliance) to withdraw approval of alternate methods or procedures which were approved at the regional level. Regional directors (compliance) may redelegate this authority to personnel not lower than the position of chief, technical services.

f. The authority in paragraph 4f above may be redelegated to regional directors (compliance), who may redelegate this authority to personnel not lower than the position of technical section supervisor.

6. *For Information Contact.* Mary B. Lerch, Procedures Branch, 1200 Pennsylvania Avenue, NW., Washington, DC 20226 (202) 566-7602.

7. *Effective Date.* This delegation order becomes effective on September 8, 1986.

Approved: August 25, 1986.
Stephen E. Higgins,
Director.

(Filed by the Office of the Federal Register on September 5, 1986 8:45 am and published in the Federal Register for September 8, 1986, 51 F.R. 31998)

Delegation Order ATF O 1100.99B

Delegation to the Associate Director (Compliance Operations) of Authorities of the Director in 27 CFR Part 25, Beer

Delegation Order

1. *Purpose.* This order delegates certain authorities of the Director to the Associate Director (Compliance Operations) and permits redelegation to other Compliance Operations personnel.

2. *Cancellation.* ATF O 1100.99A, Delegation Order—Delegation to the Associate Director (Compliance Operations) of Authorities of the Director in 27 CFR Part 245, Beer, dated July 30, 1984, is canceled.

3. *Background.* Under current regulations, the Director has authority to take final action on matters relating to breweries. We have determined that certain of these authorities should, in the interest of efficiency, be delegated to a lower oganizational level.

4. *Delegations.* Under the authority vested in the Director, Bureau of Alcohol, Tobacco and Firearms, by the Treasury Department Order No. 221, dated June 6, 1972, and by 26 CFR 301.7701-9, authority to take final action on the following matters is delegated to the Associate Director (Compliance Operations):

a. To prescribe all forms required by regulations including bonds, applications, notices, reports, returns and records, under 27 CFR 25.3.

b. To approve applications by a brewer desiring to use a brewery for other purposes, not involving the production of beer or cereal beverage, under 27 CFR 25.23(c).

c. To approve the use of an alternate method or procedure, from those specified in regulations, for details of construction, equipment or methods of operation under 27 CFR 25.52(a)(3).

d. To withdraw approval of an alternate method or procedure, if the revenue is jeopardized or effective administration of the regulations is hindered by the approval, under 27 CFR 25.52(d).

e. To grant hearings and render final decisions on disapproved bonds or consents of surety, under 27 CFR 25.101(b).

f. To require the actual place of production to be shown on labels when the brewer's name, trade name, or brand name includes the name of a city which is not the place where the beer was produced, under 27 CFR 25.142(c).

g. To determine the similarity of a container to a bottle or can and the similarity of a container to a barrel or keg, under 27 CFR 25.155.

5. *Redelegation.*

a. The authorities in paragraphs 4a, 4b, 4c and 4d above may be redelegated to Bureau Headquarters personnel not lower than the position of branch chief.

b. The authorities in paragraphs 4f and 4g above may be redelegated to Bureau Headquarters personnel not lower than the position of ATF specialist.

c. The authority in paragraph 4b above to approve applications to use the brewery for other purposes which are in the public interest because of emergency conditions may be redelgated to regional directors (compliance) who may redelegate this authority to personnel no lower than the position of chief, technical services or area supervisor.

d. The authorities in paragraphs 4b and 4c above may be redelegated to regional directors (compliance) to approve, without submission to Headquarters, requests which are identical to those previously approved by Bureau Headquarters. Regional directors (compliance) may redelegate these authorities to personnel not lower than the position of technical section supervisor.

e. The authority in paragraph 4e above may not be redelegated.

6. *For Information Contact.* Robert Trainor, Procedures Branch, Ariel Rios Federal Building, 1200 Pennsylvania Avenue, NW., Washington, DC 20226 (202) 566-7602.

7. *Effective Date.* This delegation order becomes effective on September 8, 1986.

Approved: August 25, 1986.

Stephen E. Higgins,
Director.

(Filed by the Office of the Federal Register on September 5, 1986, 8:45 am and published in the Federal Register for September 8, 1986, 51 F.R. 31997)

Delegation Order ATF O 1100.87B

Delegation Order; Associate Director (Compliance Operations); Authorities of the Director in 27 CFR Part 22, Distribution and Use of Tax-Free Alcohol

1. *Purpose.* This order delegates certain authorities of the Director to the Associate Director (Compliance Operations) and permits redelegation to other Compliance Operations personnel.

2. *Cancellation.* ATF O 1100.87 A, Delegation Order—Delegation to the Associate Director (Compliance Operations) of Authorities of the Director in 27 CFR Part 213, Tax-Free Alcohol, dated April 5, 1984, is canceled.

3. *Background.* Under current regulations, the Director has authority to take final action on matters relating to the distribution and use of tax-free

alcohol. We have determined that certain of these authorities should, in the interest of efficiency, be delegated to a lower organizational level.

4. *Delegations.* Under the authority vested in the Director, Bureau of Alcohol, Tobacco and Firearms, by Treasury Department Order No. 221, dated June 6, 1972, and by 26 CFR 301.7701-9, authority to take final action on the following matters is delegated to the Associate Director (Compliance Operations):

a. To prescribe all forms required by regulations, under 27 CFR 22.21(a).

b. To approve, pursuant to written applications, alternate methods or procedures (including alternate construction or equipment), in lieu of methods or procedures specifically prescribed in regulations, under 27 CFR 22.22(a).

c. To withdraw approval of any alternate method or procedure whenever the revenue is jeopardized or the effective administration of the regulations is hindered, under 27 CFR 22.22(c).

d. To issue permits, pursuant to 27 CFR 22.172, to cover the withdrawal of tax-free spirits by the United States or a governmental agency, under 27 CFR 22.24(a).

e. To approve applications and grant permits on ATF Form 5150.33, Spirits for Use of the United States, for the procurement of tax-free spirits for nonbeverage purposes by the United States or any governmental agency, under 27 CFR 22.172(b).

f. To cancel permits issued under 27 CFR 22.175.

g. To authorize the disposition of excess tax-free spirits in the possession of a governmental agency, under 27 CFR 22.176.

5. *Redelegation.*

a. The authorities in paragraphs 4a and 4c above may be redelegated to personnel in Bureau Headquarters not lower than the position of branch chief.

b. The authorities in paragraphs 4b and 4d through 4g above may be redelegated to personnel in Bureau Headquarters not lower than the position of ATF specialist.

c. The authority in paragraph 4b above may be redelegated to regional directors (compliance) to approve, without submission to Bureau Headquarters, subsequent applications for alternate methods or procedures which are identical to those previously approved by Bureau Headquarters. Regional directors (compliance) may redelegate this authority to personnel not lower than the position of technical section supervisor.

d. The authority in paragraph 4c above may be redelegated to regional directors (compliance) to withdraw approval of alternate methods or procedures which were approved at the regional level. Regional directors (compliance) may redelegate this authority to personnel not lower than the position of chief, technical services.

e. The authority in paragraph 4g above may be redelegated to regional directors (compliance), who may redelegate this authority to personnel not lower than the position of technical section supervisor or area supervisor.

7. *For Information Contact.* Mary B. Lerch, Procedures Branch, 1200 Pennsylvania Avenue, NW., Washington, DC 20226 (202) 566-7602.

8. *Effective Date.* This delegation order becomes effective on September 17, 1986.

Approved: September 10, 1986
Stephen E. Higgins,
Director.

(Filed by the Office of the Federal Register on September 16, 1986, 8:45 am and published in the Federal Register for September 17, 1986, 51 F.R. 32994)

VI

Announcements

Announcement 86–47

Major Disaster Areas Proclaimed by the President

The President has determined that certain areas of the United States were adversely affected by disasters of sufficient magnitude to warrant Federal assistance under the Disaster Relief Act of 1974. The specific areas adversely affected as identified by the Administrator, Federal Emergency Management Agency (FEMA) are listed below.

Persons in the affected areas holding for sale alcoholic beverages, cigars, cigarettes, or cigarette papers or tubes, which were lost, rendered unmarketable, or condemned by a duly authorized official by reason of these disasters may be paid an amount equal to the internal revenue taxes and customs duties paid on such products, as provided in 26 U.S.C. 5064 and 5708. Claims for such payments should be filed with the Regional Director (Compliance), Bureau of Alcohol, Tobacco and Firearms, for the ATF region in which the alcoholoc beverages, cigarettes, etc., were held for sale. Claims may be allowed only if filed within six months after the date the FEMA identifies the specific disaster area.

ALASKA—Declared October 27, 1986
Type of Disaster: severe storms and floods beginning on or about October 10, 1986
BOROUGHS: Matanuska-Susitna, Kenai Peninsula, City of Cordova

ILLINOIS—Declared October 7, 1986
Type of Disaster: severe storms and floods beginning on September 21, 1986
COUNTIES: Calhoun, Jersey, Kane, Lake, McHenry, Cook County townships of Leydon, Lyons, Maine, Northfield, Norwood Park, Proviso, River Forest, Riverside, St. Clair, Wheeling

KANSAS—Declared October 22, 1986
Type of Disaster: Floods
COUNTIES: Allen, Bourbon, Chautauqua, Labette, Montgomery, Neosho, Wilson

MICHIGAN—Declared September 18, 1986
Type of Disaster: severe storms and floods beginning on or about September 10, 1986
COUNTIES: Allegan, Bay, Genesee, Gratiot, Huron, Ionia, Isabella, Kent, Lake, Lapeer, Macomb, Manistee, Mason, Mecosta, Midland, Montcalm, Muskegon, Newaygo, Oceana, Osceola, Saginaw, Sanilac, Shiawasee, Tuscola, Van Buren

MISSOURI—Declared October 14, 1986
Type of Disaster: severe storms and floods beginning on September 18, 1986
COUNTIES: Boone, Callaway, Cole, Cooper, Franklin, Gasconade, Howard, Moniteau, Montgomery, Osage, St. Charles, St. Louis, Vernon, Warren, St. Charles

MONTANA—Declared October 14, 1986
Type of Disaster: severe storms and floods beginning on September 25, 1986
COUNTIES: Blaine, Hill, McCone, Phillips, Rosebud, Valley

OKLAHOMA—Declared October 14, 1986
Type of Disaster: severe storms and floods beginning on September 26, 1986
COUNTIES: Adair, Blaine, Caddo, Canadian, Cleveland, Comanche, Creek, Delaware, Garfield, Haskell, Mayes, Noble, Nowata, Oklahoma, Okmulgee, Pawnee, Sequoyah, Cherokee, Grady, Kay, Kingfisher, Logan, Muskogee, Osage, Ottawa, Payne, Rogers, Tulsa, Wagoner, Washington

WASHINGTON—Declared December 15, 1986
Type of Disaster: severe storms and floods during the period November 22-29, 1986.
COUNTIES: King, Lewis, Pierce, Snokomish

WISCONSIN—Declared October 7, 1986
Type of Disaster: severe storms and floods beginning on September 10, 1986
COUNTIES: Dodge, Fond du Lac, Kenosha, Milwaukee, Ozaukee, Sheboygan, Washington, Waukesha

Announcement 86–48

Offer in Compromise

ATF accepted an offer in compromise of $200 from the proprietor of the Fox Fire Lounge, Las Vegas, Nevada. The offer was accepted to compromise liabilities arising from violations of 26 U.S.C. 5301(c)(2) and 27 CFR 194.262. An ATF investigation disclosed the proponent had been refilling liquor bottles and was in possession of refilled liquor bottles.

Announcement 86–49

Offer in Compromise

ATF has accepted an offer in compromise of $1,000 from James Michael Holloway, Rocky Mount, Virginia. The offer was accepted to compromise criminal liabilities incurred by violation of 26 U.S.C. 5601. ATF investigators seized an unregistered distillery, 4,800 gallons of mash, 198 gallons of illicit whiskey and miscellaneous distillery equipment.

Announcement 86–50

Offer in Compromise

An offer in compromise of $40,000 was accepted by ATF from the Buckingham Corporation, New York, New York for violations of 27 U.S.C. 205(b)(3), 205(c)(2) and 205(d). The proponent gave Cutty Sark decanters to retailers and retailers' employees. Buckingham Corporation also sold decanters to a wholesaler. The wholesaler sold the decanters to a retailer, who in turn sold them back to Buckingham Corporation for approximately one dollar over the retailer's cost, in an attempt to avoid state ABC and tax violations. Both the giving of decanters to the retailers and retailers' employees and the selling of decanters to the wholesaler were both conditioned upon the purchase of a certain amount of distilled spirits. The inducement to purchase Cutty Sark involved the exclusion of similar products sold by others in interstate commerce.

Announcement No. 86–51

Offer in Compromise

Colonial Distributors, Inc., Waterville, Maine was found by ATF to be in violation of 27 U.S.C. 205(b)(3) and 205(b)(4). The proponent induced retailers in the form of advertising and other things of value. ATF has accepted an offer in compromise of $3,000 to compromise liabilities arising from these violations.

Announcement No. 86–52

Offer in Compromise

ATF has accepted an offer in compromise of $5,000 from Tony Guiffre Distributing Co., Inc., Springfield, Virginia. This offer was accepted to compromise liabilities arising from violation of 27 U.S.C. 205(b)(3). The proponent provided inducements in the form of free uninvoiced beer, installing tapping equipment free, furnishing a truck and an employee, and providing radio promotion time. These inducements to purchase malt beverages resulted in the exclusion of similar products offered for sale by others in interstate or foreign commerce.

Announcement No. 86–53

Offer in Compromise

An offer in compromise of $2,500 has been accepted by ATF from Morrey Distributing Company, Reno, Nevada for violations of 27 U.S.C. 205(a) and 205(b)(3) and (4). The proponent paid a retailer for sponsorship of professional golf tournament, paid fo advertising in the tournament publication, paid for advertising at the tournament, and required that their beer b the only beer served at three tournaments. These inducements resulted i the exclusion of similar products offere for sale by others in interstate or foreig commerce.

Announcement No. 86–54

Offer in Compromise

ATF has accepted an offer in com promise of $10,000 from Schenley In dustries, Inc., Rego Park, New York. The offer was accepted to compromise liabilities incurred by violations of 27 U.S.C. 205(a), 205(b)(1), (b)(2), and (b)(5). During the period of January 1, 1982 through December 30, 1984, some of the proponent's corporate officers owned substantial stock in a retail liquor dealer located in Las Vegas. The retailer was required and induced to purchase the proponent's products to the exclusion of other products sold in interstate commerce. The inducements included a loan to the retailer that was indirectly guaranteed by the proponent.

Announcement No. 86–55

Late EFT Payment

M.S. Walker, Inc., Somerville, Massachusetts was found by ATF in violation of 26 U.S.C. 5061. The proponent failed to timely make an EFT payment on its distilled spirits tax return. ATF accepted an offer in compromise of $5,000.

Announcement 86–56

Offer in Compromise

ATF has accepted an offer in compromise of $5,574.32 from Cajun Chef Products, Inc., St. Martinville, Louisiana. The offer was accepted to compromise civil and criminal liabilities arising from violations of 26 U.S.C. 5131. The proponent unknowingly manufactured products not in compliance with the approved formula during the period October 1979 to December 1984.

Announcement 86-57

Unified Agenda of Federal Regulations

ATF published its Unified Agenda of Federal Regulations in the Federal Register of October 27, 1986. The Unified Agenda is designed to give the public notice of ATF regulatory activities which will be under development and review during the period of October 1986 through April 1987. Information concerning specific items appearing in the following unified agenda should be directed to the appropriate contact person indicated. The next unified agenda will be published in the Federal Register for April 1987.

TABLE OF ABBREVIATIONS

ABBREVIATION	MEANING
ANPRM	Advance notice of proposed rulemaking
ATF	Bureau of Alcohol, Tobacco and Firearms
CFR	Code of Federal Regulations
DSP	Distilled Spirits Plant
E.O.	Executive Order
FR	Federal Register
FAA Act	Federal Alcohol Administration Act
NPRM	Notice of proposed rulemaking
OFR	Office of the Federal Register
OMB	Office of Management and Budget
Pub. L	Public Law
T.D.	Treasury Decision
T.D. with N	(Temporary) Treasury Decision with Notice
T.D. w/o N	Treasury Decision without Notice
Treasury	Department of the Treasury

Current and Projected Rulemakings

ALCOHOL

2042. IMPLEMENTATION OF THE "WINE IMPACT BILL"

Significance: Agency Priority

Legal Authority: 26 USC 5010

CFR Citation: 27 CFR 19.11; 27 CFR 19.37 to 19.40; 27 CFR 19.42; 27 CFR 19.346; 27 CFR 19.372; 27 CFR 19.402; 27 CFR 19.505; 27 CFR 19.566; 27 CFR 19.681; 27 CFR 19.748; 27 CFR 19.763; 27 CFR 19.764; 27 CFR 19.778 to 19.780; 27 CFR 170.681 TO 170.691; 27 CFR 197.105; . . .

Legal Deadline: None

Abstract: Restores the tax system which existed for distilled spirits products containing wine or alcoholic flavoring materials prior to the enactment of the Distilled Spirits Tax Revision Act of 1979; also permits spirits bottled for industrial purposes to be transferred in bond between distilled spirits plants.

Timetable:

Action	Date	FR Cite
NPRM	06/00/87	

Small Entity: No

Agency Contact: Jim Stephens, ATF Coordinator, Department of the Treasury, Bureau of Alcohol, Tobacco and Firearms, Ariel Rios Federal Building, 1200 Pennsylvania Avenue, NW, Washington DC 20226, 202 566-7531

2043. RECODIFICATION OF 27 CFR PART 4

Significance: Agency Priority

Legal Authority: 27 USC 205

CFR Citation: 27 CFR 4

Legal Deadline: None

Abstract: To revise the wine labeling and advertising regulations; where applicable, to incorporate production regulations; and due to statutory amendments requested, may result in a legislative submission.

Timetable:

Action	Date	FR Cite
NPRM	06/00/87	

Small Entity: No

Additional Information: Additional Agency Contact: Ed Reisman

Agency Contact: James Hunt, ATF Coordinator, Department of the Treasury, Bureau of Alcohol, Tobacco and Firearms, Ariel Rios Federal Building, 1200 Pennsylvania Avenue, NW, Washington DC 20226, 202 566-7626

2044. NONBEVERAGE DRAWBACK

Significance: Agency Priority

Legal Authority: 26 USC 5131 et seq

CFR Citation: 27 CFR 197

Legal Deadline: None

Abstract: To update, clarify, simplify, and recodify the regulations relating to drawback of tax on distilled spirits used in the manufacture of non-beverage products.

Timetable:

Action	Date	FR Cite
NPRM	12/00/86	

Small Entity: Yes

Additional Information: SMALL BUSINESSES CONT: This regulation affects approximately 500 entities.

Agency Contact: Steve Simon, ATF Specialist, Department of the Treasury, Bureau of Alcohol, Tobacco and Firearms, Ariel Rios Federal Building, 1200 Pennsylvania Avenue, NW, Washington DC 20226, 202 566-7626

2045. GRAPE HARVEST LABELING FOR WINE

Significance: Agency Priority

Legal Authority: 27 USC 205E; 27 USC 205F

CFR Citation: 27 CFR 4.29

Legal Deadline: None

Abstract: Late harvest designations, based on the Brix (percent by weight) level of the grapes at harvest would indicate to consumers that the grapes used to produce the wine were left on the vine for express purpose of increasing the sugar content. The designations would indicate additional techniques and processes were used in the production of the wine.

Timetable:

Action	Date	FR Cite
NPRM	04/00/87	

Small Entity: No

Agency Contact: Michael Breen, ATF Coordinator, Department of the Treasury, Bureau of Alcohol, Tobacco and Firearms, Ariel Rios Federal Building, 1200 Pennsylvania Avenue NW, Washington DC 20226, 202 566-7626

2046. ESTATE BOTTLED

Significance: Agency Priority

Legal Authority: 27 USC 205

CFR Citation: 27 CFR 4.26

Legal Deadline: None

Abstract: To redefine estate bottled requirements and provide for additional terms to provide requirements for imported wine.

Timetable:

Action	Date	FR Cite
NPRM	06/00/87	

Small Entity: No

Agency Contact: John Linthicum, ATF Coordinator, Department of the Treasury, Bureau of Alcohol, Tobacco and Firearms, Ariel Rios Federal Building, 1200 Pennsylvania Avenue, NW, Washington DC 20226, 202 566-7626

2047. REDUCED PROOF DISTILLED SPIRITS PRODUCTS

Significance: Agency Priority

Legal Authority: 27 USC 205

CFR Citation: 27 CFR 5.22

Legal Deadline: None

Abstract: ATF is proposing to amend the regulations to provide for reduced proof distilled spirits products similar to "light beer," "light wine" and similar "light" products which have become increasingly popular with consumers in recent years. Since 1968, the words "light whisky" have referred to whisky produced by two processes which are different from other American whiskies and the term "light" does not refer to lower alcohol content. However, ATF is considering abolishing "light whisky" as a standard of identity, so that the word "light" can refer only to reduced alcohol content. Unlike wine and beer, distilled spirits products are usually sold at more than one bottling proof (e.g. whisky is frequently sold at 80 degrees, 86 degrees, and 100 degrees proof) with the difference in proof being the only distinction between products which are otherwise identical. Therefore, ATF must carefully consider labeling to ensure there exists a clear cut difference in the minds of consumers between products at minimum bottling proof or above minimum bottling proof, and those which are reduced in proof.

Timetable:

Action	Date	FR Cite
ANPRM	08/04/83	48 FR 35460
ANPRM Comment Period Extended	10/28/83	48 FR 49870
ANPRM Comment Period End	11/02/83	48 FR 35460
ANPRM Extended Comment Period Ends	01/31/84	
ANPRM Comment Period Extended	01/30/85	50 FR 4236
ANPRM Extended Comment Period Ends	04/15/85	
ANPRM Comment Period Reopened	01/13/86	51 FR 1393
ANPRM Comment Period Extended	04/10/86	51 FR 12342
ANPRM Extended Comment Period Ends	06/13/86	
NPRM	00/00/00	

Small Entity: No

Government Levels Affected: Federal

Agency Contact: John Linthicum, ATF Coordinator, Department of the Treasury, Bureau of Alcohol, Tobacco and Firearms, Ariel Rios Federal Building 1200 Pennsylvania Avenue, NW, Washington, DC 20226, 202 566-7626

2048. RECODIFICATION OF WINE REGULATIONS (SUBPARTS A TO O)

Significance: Agency Priority

Legal Authority: 26 USC 7805

CFR Citation: 27 CFR 240.180 to 240.400

Legal Deadline: None

Abstract: To update, simplify, and clarify regulations relating to wine; and to incorporate ATF rulings into the Regulations.

Timetable:

Action	Date	FR Cite
NPRM	03/07/86	51 FR 8098
NPRM Comment Period End	07/07/86	
NPRM Comment Period Extended	07/08/86	51 FR 24719
NPRM Extended Comment Period Ends	12/31/86	
Final Action	04/00/87	

Small Entity: No

Agency Contact: James Hunt, ATF Coordinator, Department of the Treasury, Bureau of Alcohol, Tobacco and Firearms, Ariel Rios Federal Building, 1200 Pennsylvania Avenue, NW, Washington DC 20226, 202 566-7626

2049. LABELING AND ADVERTISING OF WINE, DISTILLED SPIRITS AND MALT BEVERAGES; USE OF THE WORD LIGHT (LITE)

Significance: Agency Priority

Legal Authority: 27 USC 205e to f

CFR Citation: 27 CFR 4; 27 CFR 5; 27 CFR 7

Legal Deadline: None

Abstract: "Light (Lite)" was addressed to a limited extent in Notice No. 362 (45 FR 83530). However, subsequent to its publication ATF was petitioned by the Center for Science in the Public Interest (CSPI), requesting mandatory caloric labeling on all alcohol beverages, as well as the establishment of upper limits on calories in products labeled as "light (lite.)" Comments will be requested on CSPI's petition as well as other issues involving use of the term "light (lite)."

Timetable:

Action	Date	FR Cite
NPRM	08/12/86	51 FR 28836
NPRM Comment Period End	11/10/86	

Small Entity: No

Agency Contact: James Ficaretta, ATF Coordinator, Department of the Treasury, Bureau of Alcohol, Tobacco and Firearms, Ariel Rios Federal Building, 1200 Pennsylvania Avenue, NW, Washington DC 20226, 202 566-7626

2050. LABELING AND ADVERTISING OF WINE, DISTILLED SPIRITS AND MALT BEVERAGES; APPEARANCE OF ATHLETES AND DEPICTION OF ATHLETIC EVENTS

Significance: Agency Priority

Legal Authority: 27 USC 205e to f

CFR Citation: 27 CFR 4; 27 CFR 5; 27 CFR 7

Legal Deadline: None

Abstract: Discusses present policy on prohibition of active athletes and requests comments on whether the policy should be relaxed, retained, expanded to include all celebrities. On athletic events, comments are requested if the present prohibition should be expanded to include any athletic event, regardless of when the participants are shown consuming, or preparing to consume, alcohol beverages.

Timetable:

Action	Date	FR Cite
Next Action Undetermined		

Small Entity: No

Agency Contact: James Ficaretta, ATF Coordinator, Department of the Treasury, Bureau of Alcohol, Tobacco and Firearms, Ariel Rios Federal Building, 1200 Pennsylvania Avenue, NW, Washington DC 20226, 202 566-7626

2051. RECODIFICATION OF 27 CFR PART 250 AS 27 CFR PART 26

Significance: Agency Priority

Legal Authority: 26 USC 7651 to 7652; PL 85-859; 26 USC 5314; 26 USC 7805

CFR Citation: 27 CFR 250

Legal Deadline: None

Abstract: As part of the recodification of Part 250, we plan to simplify, consolidate and or eliminate as many sections of regulations as possible placing particular emphasis on reducing the number of recordkeeping requirements, forms, and customs responsibilities. Wherever possible, we plan to utilize a proprietor's commercial records in lieu of requiring the proprietor to submit public use forms. These changes to Part 250 should considerably reduce the burden hours on industry.

Timetable:

Action	Date	FR Cite
NPRM	09/00/87	

Small Entity: No

Agency Contact: Jim Stephens, ATF Coordinator, Department of the Treasury, Bureau of Alcohol, Tobacco and Firearms, Ariel Rios Federal Building, 1200 Pennsylvania Avenue, NW, Washington DC 20226, 202 566-7531

2052. WINEMAKING TERMINOLOGY

Significance: Agency Priority

Legal Authority: 27 USC 205(e)

CFR Citation: 27 CFR 4.35

Legal Deadline: None

Abstract: ATF is proposing to define words denoting winemaking operations for use on wine labels in conjunction with the name and address of the bottler. This project partially fulfills the requirements of the court order in Wawskiewicz v. Department of the Treasury, 480 F. Supp. 739 (D.D.C. 1979), aff'd. in part, rev'd in part, 670 F.2d 296.

Timetable:

Action	Date	FR Cite
NPRM	05/29/86	51 FR 19361
NPRM Comment Period End	09/26/86	
Final Action	06/00/87	

Small Entity: No

Agency Contact: John Linthicum, ATF Coordinator, Department of the Treasury, Bureau of Alcohol, Tobacco and Firearms, Ariel Rios Federal Building, 1200 Pennsylvania Avenue, NW, Washington DC 20226, 202 566-7626

2053. NON-GENERIC DESIGNATIONS OF GRAPE WINE HAVING GEOGRAPHICAL SIGNIFICANCE

Significance: Agency Priority

Legal Authority: 27 USC 205

CFR Citation: 27 CFR 4.24

Legal Deadline: None

Abstract: This proposal expands the list of names officially recognized under 27 CFR Part 4, as being non-generic for the purposes of labeling and advertising of wine. This proposal is the result of petitions from numerous foreign countries for ATF recognition of non-generic wine designations which, in their view, denote distinctive national products. This proposal is also an outgrowth of one of the commitments made by the United States, in the Exchange of Letters of July 26, 1983 with the Commission of the European Communities, to work within the regulatory framework of 27 CFR Part 4, to prevent erosion of non-generic designations of geographic significance. For practical reasons it is being proposed that ony "examples" of non-generic designations be listed in Part 4 while a complete list of all non-generic designations be listed in a new Part 12.

Timetable:

Action	Date	FR Cite
NPRM	12/00/86	

Small Entity: No

Agency Contact: John Kodadek, ATF Specialist, Department of the Treasury, Bureau of Alcohol, Tobacco and Firearms, Ariel Rios Federal Building, 1200 Pennsylvania Avenue, NW, Washington DC 20226, 202 535-6245

2054. RECODIFICATION OF 27 CFR PART 251 AS 27 CFR PART 27

Significance: Agency Priority

Legal Authority: 26 USC 7805

CFR Citation: 27 CFR 27; 27 CFR 251

Legal Deadline: None

Abstract: To update and clarify regulations relating to the Importation of Distilled Spirits, Wines and Beer and to incorporate related ATF Rulings into the regulations.

Timetable:

Action	Date	FR Cite
NPRM	06/00/87	

Small Entity: No

Agency Contact: Robert Petrangelo, ATF Coordinator, Department of the Treasury, Bureau of Alcohol, Tobacco and Firearms, Ariel Rios Federal Building, 1200 Pennsylvania Avenue, NW, Washington DC 20226, 202 566-7531

2055. USE OF TERMS IN THE LABELING AND ADVERTISING OF MALT BEVERAGES HAVING AN ALCOHOL CONTENT OF LESS THAN .5% BY VOLUME

Significance: Agency Priority

Legal Authority: 27 USC 205

CFR Citation: 27 CFR 7

Legal Deadline: None

Abstract: ATF is proposing to incorporate into the regulations two Rulings (Rev. Rul. 57–322 and ATF Rul. 85–11) regarding the use of the terms "Non-Alcoholic," "Alcohol-Free," "Near Beer," and "Cereal Beverage" in the labeling and advertising of Malt Beverages.

Timetable:

Action	Date	FR Cite
NPRM	12/00/86	

Small Entity: No

Agency Contact: Jim Ficaretta, ATF Coordinator, Department of the Treasury, Bureau of Alcohol, Tobacco and Firearms, Ariel Rios Federal Building, 1200 Pennsylvania Avenue, NW, Washington DC 20226, 202 566-7626

2056. LISTING OF PRINCIPAL PLACE OF BUSINESS ON DISTILLED SPIRITS LABELS

Significance: Agency Priority

Legal Authority: 26 USC 7805; 27 USC 205

CFR Citation: 27 CFR 5; 27 CFR 19

Legal Deadline: None

Abstract: Will allow producers of distilled spirits who operate more than one distilled spirits plant to use a principal place of business as the address shown on labels in lieu of listing the actual place of production, provided the producer establishes a coding system for identifying where the product was actually bottled.

Timetable:

Action	Date	FR Cite
NPRM	10/00/86	

Small Entity: No

Agency Contact: Jim Hunt, ATF Coordinator, Department of the Treasury, Bureau of Alcohol, Tobacco and Firearms, Ariel Rios Federal Building, 1200 Pennsylvania Avenue, NW, Washington DC 20226, 202 566-7626

FIREARMS

2057. FIREWORKS REGULATIONS

Significance: Agency Priority

Legal Authority: 18 USC Chapter 40

CFR Citation: 27 CFR 55

Legal Deadline: None

Abstract: Information gathering on Safe Handling of Explosive Materials in the Fireworks industry is necessary due to accidental explosions causing death. Injuries and property damage have occurred at fireworks manufacturing and assembling plants. Damage has been in the millions of dollars and some regulatory changes are needed. This notice to gather information is to determine changes needed and potential costs.

Timetable:

Action	Date	FR Cite
General Notice	06/08/84	49 FR 23872
NPRM	01/00/87	

Small Entity: No

Agency Contact: Wayne Moran, Chief, Firearms and Explosives, Operations Branch, Department of the Treasury, Bureau of Alcohol, Tobacco and Firearms, Ariel Rios Federal Building, 1200 Pennsylvania Avenue, NW, Washington DC 20226, 202 566-7591

2058. AMENDMENTS TO THE GUN CONTROL ACT OF 1968

Significance: Agency Priority

Legal Authority: PL 99–308, PL 99–360

CFR Citation: 27 CFR 72; 27 CFR 178; 27 CFR 179

Legal Deadline: None

Abstract: Implements changes required by Public Law 99–308 (Gun Owners Protection Act of 1968), and amendments thereto (Public Law 99–360).

Timetable:

Action	Date	FR Cite
NPRM	10/00/86	
Interim Final Rule	10/00/86	

Small Entity: No

Agency Contact: Dan Crowley, ATF Specialist, Department of the Treasury, Bureau of Alcohol, Tobacco and Firearms, Ariel Rios Federal Building, 1200 Pennsylvania Avenue, NW, Washington DC 20226, 202 566-7591

TOBACCO PRODUCTS

2059. MANUFACTURER'S IDENTIFICATION ON TOBACCO PRODUCTS PACKAGES

Significance: Agency Priority

Legal Authority: 26 USC 5723

CFR Citation: 27 CFR 270.11; 27 CFR 270.212; 27 CFR 275.163; 27 CFR 275.170; 27 CFR 275.172; 27 CFR 275.174; 27 CFR 290.11; 27 CFR 290.181; 27 CFR 290.185; 27 CFR 290.241 to 290.267; 27 CFR 295.42

Legal Deadline: None

Abstract: To liberalize requirements relating to manufacturer identification on tobacco products packages and to make other miscellaneous changes.

Timetable:

Action	Date	FR Cite
NPRM	09/00/87	

Small Entity: No

Agency Contact: Cliff Mullen, ATF Specialist, Department of the Treasury, Bureau of Alcohol, Tobacco and Firearms, Ariel Rios Federal Building, 1200 Pennsylvania Avenue, NW, Washington, DC 20226, 202 566-7531

2060.27 CFR PART 285, MANUFACTURE OF CIGARETTE PAPERS AND TUBES

Significance: Agency Priority

Legal Authority: 26 USC 7805 (68A Stat 917)

CFR Citation: 27 CFR 285

Legal Deadline: None

Abstract: To reduce or eliminate administrative and recordkeeping burdens under 27 CFR Part 285.

Timetable:

Action	Date	FR Cite
ANPRM	09/01/84	
ANPRM Comment Period End	10/02/84	
NPRM	06/00/87	

Small Entity: Undetermined

Agency Contact: Cliff Mullen, ATF Specialist, Department of the Treasury, Bureau of Alcohol, Tobacco and Firearms, Ariel Rios Federal Building, 1200 Pennsylvania Avenue, NW, Washington DC 20226, 202 566-7531

ALCOHOL

2061. AMERICAN VITICULTURAL AREAS

Significance: Agency Priority

Legal Authority: 27 USC 205

CFR Citation: 27 CFR 9

Legal Deadline: None

Abstract: Establishes grape-growing regions as American viticultural areas for purposes of labeling and advertising of wine.

Supplemental Timetable:

Alexander Valley, CA—Amendment (contact Michael Breen)
- NPRM 04/16/86 (51 FR 12876)
- NPRM Comment Period End 06/16/86
- Final Action 08/26/86 (51 FR 30352)

Arkansas Mountain, AR (contact Steve Simon)
- NPRM 04/07/86 (51 FR 11753)
- NPRM Comment Period End 05/22/86
- Final Action 09/00/86 (51 FR 34204)

Bell Montain, TX (contact Steve Simon)
- NPRM 06/03/86 (51 FR 19854)
- NPRM Comment Period End 07/03/86
- Final Action 10/00/86

El Dorado, CA—Amendment (contact Jim Hunt)
- NPRM 06/03/86 (51 FR 19853)
- NPRM Comment Period End 07/03/86
- Final Action 10/00/86

Kanawha River Valley, WVA (contact John Linthicum)
- NPRM 01/21/86 (51 FR 2728)
- NPRM Comment Period End 02/20/86
- Final Action 04/08/86 (51 FR 11912)

Monticello, VA—Amendment (contact Jim Hunt)
- NPRM 06/03/86 (51 FR 19856)
- NPRM Comment Period End 07/03/86
- Final Action 10/00/86

North Fork of Long Island, NY (contact Ed Reisman)
- NPRM 03/21/86
- Final Action 10/00/86

Northern Neck, VA (contact Ed Reisman)
- NPRM 09/17/85 (50 FR 37692)
- NPRM Comment Period End 11/01/85
- Final Action 12/00/86

Old Mission Peninsula, MI (contact Ed Reisman)
- NPRM 12/00/86

Ozark Highlands, MO (contact Steve Simon)
- NPRM 12/00/86

Ozark Mountains, AR, OK, MO (contact Steve Simon)
NPRM 09/17/85 (50 FR 37696)
NPRM Comment Period End 11/01/85
Final Action 07/02/86 (51 FR 24142)

San Lucas, CA (contact Mike Breen)
NPRM 08/18/86 (51 FR 29478)
NPRM Comment Period End 10/17/86

Sonoma Coast, CA (contact John Linthicum)
NPRM 12/00/86

Stags Leap District, CA (contact Jim Ficaretta)
NPRM 12/00/86

Small Entity: No

Agency Contact: See supplemental timetable, American Viticultural Areas, Department of the Treasury, Bureau of Alcohol, Tobacco and Firearms, Ariel Rios Federal Building, 1200 Pennsylvania Avenue, NW, Washington DC 20226, 202 566-7626

2062. REPORTING TAXES DUE TO THE GOVERNMENTS OF PUERTO RICO AND THE VIRGIN ISLANDS

Significance: Agency Priority

Legal Authority: 27 USC 5555; 26 USC 5207

CFR Citation: 27 CFR 19.377

Legal Deadline: None

Abstract: Changes the reporting requirements for most Puerto Rican and Virgin Islands spirits bottled at domestic distilled spirits plants. The reporting requirement will remain as a line item on the proprietor's monthly reports. However, the time for recording tax determination of insular spirits will change from the time these spirits enter the processing account to the time of tax determination.

Timetable:

Action	Date	FR Cite
NPRM	04/13/81	46 FR 21624
NPRM Amended	02/14/85	50 FR 6200
Final Action	10/00/86	

Small Entity: No

Agency Contact: Jim Stephens, ATF Coordinator, Department of the Treasury, Bureau of Alcohol, Tobacco and Firearms, Ariel Rios Federal Building, 1200 Pennsylvania Avenue, NW, Washington DC 20226, 202 566-7531

2063. STANDARD OF IDENTITY FOR VODKA

Significance: Agency Priority

Legal Authority: 27 USC 205

CFR Citation: 27 CFR 5.22

Legal Deadline: None

Abstract: Considers clarifying the standard of identity for vodka by revoking Revenue Ruling 56-98 which permits the use of small quantities of sugar or citric acid in vodka; or would propose a new class and type of vodka which contains trace amounts of sugar or citric acid.

Timetable:

Action	Date	FR Cite
ANPRM	01/11/82	47 FR 1148
ANPRM Comment Period End	07/11/82	
NPRM	02/19/86	51FR 6009
NPRM Comment Period End	05/20/86	
Final Action	12/00/87	

Small Entity: No

Agency Contact: John Linthicum, ATF Coordinator, Department of the Treasury, Bureau of Alcohol, Tobacco and Firearms, Ariel Rios Federal Building, 1200 Pennsylvania Avenue, NW, Washington DC 20226, 202 566-7626

2064. CHANGE IN STANDARD OF IDENTITY FOR STRAIGHT WHISKIES OF THE SAME TYPE

Significance: Agency Priority

Legal Authority: 27 USC 205

CFR Citation: 27 CFR 5.22(b)(1)(iii); 27 CFR 19.346(b)

Legal Deadline: None

Abstract: Current regulations do not provide for distilled spirits plant proprietors to mingle and still designate as straight whiskies of the same type produced at different distilleries or produced by different distillers. This project will allow such whiskies to be labeled as straight as long as the whiskies are produced within the same state. Their only alternative is to leave the regulations as they are and to not allow such whiskies to be mingled and designated as straight. We do not anticipate any extra costs to result from this change in regulations. This change will result in greater flexibility for distilled spirits plant proprietors.

Timetable:

Action	Date	FR Cite
NPRM	05/08/84	49 FR 19333
NPRM Comment Period End	07/06/84	
NPRM Comment Period Extended	07/13/84	49 FR 30538
Extended NPRM Comment Period Ends	10/29/84	
Final Action	10/00/86	

Small Entity: No

Agency Contact: Robert White, ATF Coordinator, Department of the Treasury, Bureau of

Alcohol, Tobacco and Firearms, Ariel Rios Federal Building, 1200 Pennsylvania Avenue, NW, Washington DC 20226, 202 566-7531

2065. MATERIALS AND PROCESSES FOR THE PRODUCTION AND TREATMENT OF WINE

Significance: Agency Priority

Legal Authority: 27 USC 5382

CFR Citation: 27 CFR 240

Legal Deadline: None

Abstract: Updates, clarifies, and simplifies the regulations relating to the production and treatment of wine.

Timetable:

Action	Date	FR Cite
NPRM	09/24/84	49 FR 37527
NPRM Comment Period Extended	01/22/85	50 FR 2832
NPRM Comment Period End	01/23/85	
Extended NPRM Comment Period Ends	03/01/85	
Final Action	12/00/86	

Small Entity: No

Agency Contact: Mike Breen, ATF Coordinator, Department of the Treasury, Bureau of Alcohol, Tobacco and Firearms, Ariel Rios Federal Building, 1200 Pennsylvania Avenue, NW, Washington DC 20226, 202 566-7626

2066. REPLACEMENT OF PROOF STATEMENT WITH PERCENTAGE-OF-ALCOHOL-BY-VOLUME STATEMENT ON DISTILLED SPIRITS LABELS

Significance: Agency Priority

Legal Authority: 26 USC 5206; 26 USC 5301; 27 USC 205(e)

CFR Citation: 27 CFR 5.37; 27 CFR 19.643

Legal Deadline: None

Abstract: Joseph E. Seagram and Sons, Inc. has petitioned ATF to require the statement of alcohol content on labels of distilled spirits to be stated in percentage-alcohol-by-volume instead of proof.

Timetable:

Action	Date	FR Cite
NPRM	01/24/86	51 FR 1393
NPRM Comment Period End	05/27/86	
Final Action	10/00/86	

Small Entity: No

Agency Contact: John Linthicum, ATF Coordinator, Department of the Treasury, Bureau of Alcohol, Tobacco and Firearms, Ariel Rios Federal Building, 1200 Pennsylvania Avenue, NW, Washington DC 20226, 202 566-7626

2067. WINEGRAPE VARIETAL DESIGNATIONS

Significance: Agency Priority

Legal Authority: 27 USC 205(e)

CFR Citation: 27 CFR 4

Legal Deadline: 22 CFR 4

Abstract: This Proposal would establish standardized lists of winegrape varietal names which may be used on a wine label. In addition we are proposing a method by which new names may be added to the list. These standardized lists will assure more accurate and truthful identification of the wine.

Timetable:

Action	Date	FR Cite
NPRM	02/04/86	51 FR 4392
NPRM Comment Period End	04/07/86	
NPRM Comment Period Extended	04/08/86	51 FR 11944
NPRM Extended Comment Period Ends	07/07/86	
Final Action	06/00/87	

Small Entity: No

Agency Contact: Charles Bacon, ATF Coordinator, Department of the Treasury, Bureau of Alcohol, Tobacco and Firearms, Ariel Rios Federal Building, 1200 Pennsylvania Avenue, NW, Washington DC 20226, 202 566-7595

Completed Actions

2068. RECODIFICATION OF BEER REGULATIONS

Significance: Agency Priority

Legal Authority: 26 USC 5051 et seq; 26 USC 5401 et seq

CFR Citation: 27 CFR 245

Legal Deadline: None

Abstract: To simplify and clarify regulations relating to the production and taxpayment of beer; to simplify and reduce paperwork and recordkeeping requirements imposed on industry; and to reflect technological advances in the beer industry since the regulations were last revised.

Timetable:

Action	Date	FR Cite
NPRM	02/03/83	48 FR 4803
NPRM Comment Period End	05/04/83	
Final Action	03/05/86	51 FR 7666
Final Action Effective	05/01/86	

Small Entity: No

Agency Contact: John Linthicum, ATF Coordinator, Department of the Treasury, Bureau of Alcohol, Tobacco and Firearms, Ariel Rios Federal Building, 1200 Pennsylvania Avenue, NW, Washington DC 20226, 202 566-7626

2069. GEOGRAPHIC BRAND NAMES

Significance: Agency Priority

Legal Authority: 27 USC 205

CFR Citation: 27 CFR 4.39(i)

Legal Deadline: None

Abstract: To propose alternatives to the present regulation which requires that the word "brand" appear in the same size type as the brand name itself.

Timetable:

Action	Date	FR Cite
NPRM	05/07/84	49 FR 19330
NPRM Comment Period End	07/06/84	
NPRM Comment Period Extended	07/13/84	49 FR 28417
NPRM Comment Period Extended	09/04/84	49 FR 34847
Extended NPRM Comment Period Ends	09/14/84	
NPRM Extended Comment Period Ends	01/02/85	
Final Action	06/05/86	51 FR 20480
Final Action Effective	07/07/86	

Small Entity: No

Agency Contact: Jim Ficaretta, ATF Coordinator, Department of the Treasury, Bureau of Alcohol, Tobacco and Firearms, Ariel Rios Federal Building, 1200 Pennsylvania Avenue, NW, Washington DC 20226, 202 566-7626

2070. 375 ML AND 500 ML CONTAINERS FOR DISTILLED SPIRITS

Significance: Agency Priority

Legal Authority: 26 USC 5301; 27 USC 205

CFR Citation: 27 CFR 5.47a

Legal Deadline: None

Abstract: To determine if both sizes should be standards of fill or whether the 375 ml size should replace the 500 ml size.

Timetable:

Action	Date	FR Cite
NPRM	09/23/83	48 FR 43346
NPRM Comment Period Extended	03/21/84	49 FR 10553
NPRM Comment Period End	03/23/84	
Extended Comment Period Ends	01/02/85	
Final Action	05/01/86	51 FR 16167
Final Action Effective	06/02/86	

Small Entity: No

Additional Information: ADDITIONAL AGENCY CONTACT: Jim Ficaretta

Agency Contact: Ed Reisman, ATF Specialist, Department of the Treasury, Bureau of Alcohol, Tobacco and Firearms, Ariel Rios Federal Building, 1200 Pennsylvania Avenue, NW, Washington DC 20226, 202 566-7626

2071. CARIBBEAN BASIN ECONOMIC RECOVERY ACT

Significance: Agency Priority

Legal Authority: PL 98-67, Title II (Caribbean Basin Economic Recovery Act); 26 USC 7652

CFR Citation: 27 CFR 19.42; 27 CFR 19.377; 27 CFR 19.517; 27 CFR 250.1; 27 CFR 250.30; 27 CFR 250.31; 27 CFR 250.35; 27 CFR 250.200

Legal Deadline: None

Abstract: Under current law (26 USC 7652), the excise taxes collected on all merchandise manufactured in Puerto Rico and the Virgin Islands, and shipped to the U.S., are deposited into the Treasury of either Puerto Rico or the Virgin Islands.

The Caribbean Basin Economic Recovery Act was passed to promote the economic revitalization of the Caribbean Basin area by removing the duty on certain merchandise from certified Caribbean Basin countries. In order to minimize any adverse effects this would have on Puerto Rico and the Virgin Islands, a provision was added to require that the excise taxes collected on all rum that is imported into the U.S. be deposited in the Treasuries of Puerto Rico and the Virgin Islands.

This would be in addition to the amounts already transferred under 26 U.S.C. 7652 (a) and (b).

Timetable:

Action	Date	FR Cite
NPRM	02/14/85	50 FR 6200
Final Action	08/05/86	51 FR 28071
Final Action Effective	09/04/86	

Small Entity: No

Agency Contact: Jim Stephens, ATF Coordinator, Department of the Treasury, Bureau of Alcohol, Tobacco and Firearms, Ariel Rios Federal Building, 1200 Pennsylvania Avenue, NW, Washington DC 20226, 202 566-7531

2072. LISTING OF PRINCIPAL PLACE OF BUSINESS ON BEER LABELS

Significance: Agency Priority

Legal Authority: 27 USC 205(e); 26 USC 5412

CFR Citation: 27 CFR 7.25; 27 CFR 25.142; 27 CFR 25.143

Legal Deadline: None

Abstract: This proposed rule would allow a brewer who operates more than one brewery to use a principal place of business as the address shown on labels in lieu of listing the actual place of production or showing all of the breweries operated by the brewer. This rule would benefit the industry by eliminating the need to prepare redesigned labels every time a brewery was bought, sold, built, or otherwise disposed of. It would benefit industry and government by reducing the numbers of labels submitted for approval under the Federal Alcohol Administration Act.

Timetable:

Action	Date	FR Cite
NPRM	10/15/85	50 FR 41701
Final Action	03/12/86	51 FR 8490
Final Action Effective	05/01/86	

Small Entity: No

Agency Contact: John Linthicum, ATF Coordinator, Department of the Treasury, Bureau of Alcohol, Tobacco and Firearms, Ariel Rios Federal Building, 1200 Pennsylvania Avenue, NW, Washington DC 20226, 202 566-7626

2073. DISCLOSURE OF SULFITING AGENTS ON ALCOHOL BEVERAGE LABELS

Significance: Agency Priority

Legal Authority: 27 USC 205(c)

CFR Citation: 27 CFR 4; 27 CFR 5; 27 CFR 7

Legal Deadline: None

Abstract: The Food and Drug Administration has determined that Sulfites or Sulfiting Agents pose a risk to the health of some individuals. Based on this action, ATF is proposing to require the disclosure of sulfiting agents in the labeling of alcohol beverage products in which they are present at a level of 10 or more ppm. measured as total sulfur dioxide.

Timetable:

Action	Date	FR Cite
NPRM	06/24/85	50 FR 26001
NPRM Comment Period End	08/23/85	
NPRM Comment Period Extended	08/23/85	50 FR 43166
NPRM Extended Comment Period Ends	12/23/85	
Final Action	09/30/86	51 FR 34706

Small Entity: Yes

Additional Information: ADDITIONAL AGENCY CONTACT: Jim Ficaretta

Agency Contact: Mike Breen, ATF Coordinator, Department of the Treasury, Bureau of Alcohol, Tobacco and Firearms, Ariel Rios Federal Building, 1200 Pennsylvania Avenue, NW, Washington DC 20226, 202 566-7626

Announcement 86-58

Report of Imported Firearms — Quarter Ending September 1986

Country of Exportation	Shotguns	Rifles	Handguns	Total Firearms	*Miscellaneous
Austria			550	550	25
Belgium					
Brazil	626	3,203	4,230	8,059	
Canada	1	119	2,400	2,520	
Finland					
France					
Great Britain	57	7	5	69	48
Hungary					
Israel		6,677	1,000	7,677	5,261
Italy	6,885	1,507	19,546	27,938	2
Japan					
Mexico					
Portugal					
Spain	153		4,033	4,186	
Sweden					
Switzerland					
People's Republic of China					
West Germany		54	1,812	1,866	8
Yugoslavia					
Others	133	3,004	7,759	10,896	73
Total	7,855	14,571	14,335	63,761	**5,417

* Includes machineguns.

** Not included in Total Firearms figure.

Announcement 86-59

Fiscal Year Statistical Tabulation of Firearms

Report of Imported Firearms—FY-1986

Country of Exportation	Shotguns	Rifles	Handguns	Total Firearms	*Miscellaneous
Austria			550	550	25
Belgium	5,047	10,567	12,541	28,155	4
Brazil	626	3,203	17,620	21,449	
Canada	1	119	2,400	2,520	
Finland		50		50	
France					1,255
Great Britain	80	15	5	100	48
Hungary	737	3	3,500	4,240	
Israel		11,453	3,971	15,424	5,884
Italy	23,561	2,939	52,783	79,283	3
Japan	37,792	55,318	600	93,710	
Mexico					
Portugal	4,669	2,020		6,689	
Spain	2,797	1,004	4,033	7,834	
Sweden	1	10	52	63	
Switzerland	2	3	28	33	
People's Republic of China					
West Germany	986	2,895	20,372	24,253	292
Yugoslavia					
Others	163	54,097	14,490	68,750	73
Total	76,462	143,696	132,945	353,103	**7,584

* Includes machineguns.

** Not included in Total Firearms figure.

Announcement 86-60

Section 6621.—Determination of Rate of Interest

26 CFR 301.6621-1: Interest rate.

Adjusted interest rate; underpayments and overpayments. The adjusted rate of interest determined under section 6621 of the Code will be 9 percent on underpayments and 8 percent on overpayments beginning January 1, 1987.

Rev. Rul. 86-146[1]

Section 6621 of the Internal Revenue Code, as amended by the Tax Reform Act of 1986, section 1511, Pub. L. No. 99-514, 100 Stat.—, establishes differential rates for allowance of interest on tax overpayments and assessment of interest on tax underpayments. Under section 6621(a)(1), the overpayment rate is the sum of the short-term federal rate plus 2 percentage points. Under section 6621(a)(2), the underpayment rate is the sum of the short-term federal rate plus 3 percentage points.

Section 6621(b)(1) of the Code provides that the Secretary shall determine the short-term federal rate for the first month in each calendar quarter.

Section 6621(b)(2) of the Code provides that the federal short-term rate determined under section 6621(b)(1) for any month shall apply during the first calendar quarter beginning after such month.

Section 6621(b)(3) of the Code provides that the federal short-term rate for any month shall be the federal short-term rate determined during such month by the Secretary in accordance with section 1274(d), rounded to the nearest full percent (or, if a multiple of ½ of 1 percent, such rate shall be increased to the next highest full percent.)

Rounded to the nearest full percent, the federal short-term rate determined during the month of October is 6 percent. Accordingly, an overpayment rate of 8 percent and an underpayment rate of 9 percent are established for the calendar quarter beginning January 1, 1987. The rates apply to amounts bearing interest during that calendar quarter. Pursuant to section 6621(b)(2)(B) of the Code, the 9 percent rate applicable to individual estimated tax underpayments also applies through April 15, 1987.

Daily rates for compound interest for 8 percent and 9 percent were published in Tables 14 and 15 of Rev. Proc. 83-7, 1983-1 C.B. 583, 597, 598.

Compound interest rates for prior periods are set forth in the following table:

PERIOD	RATE
January 1, 1983-June 30, 1983	16%
July 1, 1983-December 31, 1983	11%
January 1, 1984-June 30, 1984	11%
July 1, 1984-December 31, 1984	11%
January 1, 1985-June 30, 1985	13%
July 1, 1985-December 31, 1985	11%
January 1, 1986-June 30, 1986	10%
July 1, 1986-December 31, 1986	9%

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[1] Also released as News Release IR-86-163, dated December 2, 1986.

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The abbreviation and number in parentheses following the index entry refer to the specific item: numbers following the parentheses refer to the volume and page number in which it appears.

Key to Abbreviations:

ATFP	ATF Procedure
ATFR	ATF Ruling
DO	Delegation Order
H.R.	House Report
S.R.	Senate Report
PL	Public Law
TD	Treasury Decision

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